

NO. 82-1554
IN THE

October Term, 1982

CHARLES E. STRICKLAND,
Superintendent
Florida State Prison;
JIM SMITH, Attorney General
of Florida, and LOUIE L. WAINWRIGHT
Secretary, Florida Department
of Corrections,
Petitioners,

vs.

DAVID LEROY WASHINGTON,
Respondent.

On Petition for a Writ of Certiorari
to the United States
Court of Appeals for the
Former Fifth Circuit (Unit B)

JOINT APPENDIX

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Petition Filed: March 18, 1983
Petition Granted: June 6, 1983

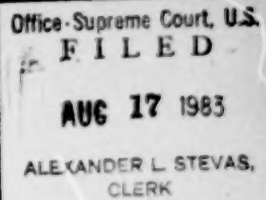


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NOTE: THE REFERENCE TO "EXHIBITS" IN THE
RECORD PAGINATION REFERS TO UN-
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CHRONOLOGICAL LIST OF RELEVANT DOCKET
ENTRIES

October 1, 1976-Confession to Meli murder.

October 7, 1976-Indictment for First Degree Murder (Meli).

October 7, 1976-Appointment of counsel (Meli).

November 5, 1976-Confession to Birk and Pridgen murders.

November 17, 1976-Indictments for First Degree Murder (Birk and Pridgen).

November 22, 1976-Reappointment of counsel (Birk and Pridgen).

December 1, 1976-Withdrawal of not guilty plea.

December 6, 1976-Sentencing Proceeding.

December 15, 1976-State Court findings in Support of Death/Penalty.

September 7, 1978-Florida Supreme Court affirms death sentences.

April 30, 1979-U.S. Supreme Court denies certiorari.

March 13, 1981-Death Warrant signed.

March 7, 1981-State trial Court denies Motion for Collateral Relief.

CHRONOLOGICAL LIST OF RELEVANT DOCKET
ENTRIES (continued)

April 3, 1981-Petition for Habeas Corpus
filed.

April 6, 1981-Florida Supreme Court af-
firms State trial Court order.

April 7, 1981-U.S. District Court Order
Granting Stay of Execution.

April 10, 1981-U.S. District Court Eviden-
tiary Hearing on Habeas Petition.

April 15, 1981-U.S. District Court Order
denying Habeas Petition.

May 6, 1981-U.S. Supreme Court denies
Motion to Vacate Stay by Eleventh
Circuit.

April 23, 1982-Eleventh Circuit Panel
opinion reverses U.S. District Court.

May 14, 1982-Eleventh Circuit sua sponte
grants rehearing en banc.

June 15, 1982-Oral Argument Eleventh Cir.
cuit, en banc.

December 23, 1982-Eleventh Circuit en banc
reverses U.S. District Court.

March 18, 1983-Petition for Certiorari
filed.

June 6, 1983-Petition granted.

[EXHIBITS]

1

METROPOLITAN DADE COUNTY • FLORIDA

1700 N.W. 10th Avenue
Miami, Florida
33136

JACKSON MEMORIAL
HOSPITAL
Forensic Service-
The Institute

October 8, 1976

The Honorable John Tanksley
County Court
Magistrate Division
1351 N.W. 12th Street
Miami, Florida 33125

RE: WASHINGTON, David
26 year old Black Male
#76-25768 - 70

Dear Judge Tanksley:

The above-named individual was seen for psychiatric evaluation at the Dade County Jail on October 7, 1976 in accordance with the court order signed by Judge Herbert M. Klein on October 2, 1976 in connection with the charges of first degree murder; kidnap for ransom; armed robbery; bench warrant-driver's license.

Prior to seeing the defendant I had occasion to read a copy of the defendant's statement which was apparently obtained on Friday, October 1, 1976 by members of the Metropolitan Public Safety Department. This statement was furnished to me by Mr. Adorno, Assistant State Attorney. I advised the defendant prior to the interview that I had read the statement and

was aware of many of the apparent facts of the alleged offense. The defendant did not seem to be upset with this and was reasonably cooperative during the interview. The defendant related to me how he had managed to contact the victim through an ad in the newspaper and arranged to have the victim meet him at a shopping center. He further explained how he convinced the victim to drive him to his house and to come into the house with him so that he could give the victim the money for the car. The defendant, however, did not corroborate what he had apparently said during the statement given to the Public Safety Department officer regarding the assistance he received from two other individuals, his half-brother and a friend. He told me that they were not present when the victim was tied up and that they took no part in the alleged offense. He stated that they had no knowledge that he was holding the victim and that they did not participate in any way. The only contradiction between what he told me and what he revealed in the statement to the Public Safety Department officers was in relationship to the involvement of his step-brother, Winkie, and his friend, Mills. The defendant further related to me that he found it necessary to stab the victim when the victim attempted to escape. This occurred after the defendant had cashed the check for approximately \$2,600.00 and before he went to pick up money that was to be paid for the ransom of the victim.

During the interview the defendant was

generally comfortable and related information in a cohesive and goal-directed manner. He did not show any bizarre or unusual ideation. There was no evidence of delusional thinking and he did not acknowledge any auditory, visual or tactile hallucinations. He also denied the use of drugs, such as heroin, cocaine or sedatives. He further denied the use of alcohol prior to, at the time of or after the alleged offense. He also denied any problem with them in the past. The defendant stated that he had become involved in the alleged offenses because of his desire to obtain money. He states that he was unable to obtain work and that he was becoming quite desperate. He related that he had been living at his stepfather's house with his half-brother Winkie. His half-brother and the defendant have the same mother. He notes that his stepfather often was not at home and stated that the same was true with his half-brother. He states this is the reason he was able to keep the victim tied up at his stepfather's house without his half-brother, his stepfather or his friends having knowledge of it.

The defendant is the oldest of eight children. Most of his siblings have different fathers, but all share the same mother. His mother is employed currently at Mt. Sinai as a dietitian. He states that he sees her fairly often and has no problems in his relationship with her, although she does urge him to find a job. The defendant last worked regularly in about 1974 after holding a job at a local warehouse.

He apparently held the job for about three years. He did work briefly a year ago. He states that he has only a tenth grade education and does not possess good skills in this area. However, he feels that he is intelligent and not suffering from any mental or emotional disturbance.

The defendant's mood during the interview was not one of depression or elation. His anxiety level was not high. His affect does not appear to be inappropriate. Testing of special faculties revealed that he was oriented to the day, month and year. His fund of general information was generally adequate and he commented about recent events in the news. He was able to recall the last four presidents. He did not do well on mathematical calculations. He was able to multiply 5×5 correctly and to add $7+6$ correctly. He could not subtract $15-8$ correctly, but only after it was put in terms of, how much money do you have if you have five quarters? He corrected stated \$1.25. Tests of abstract reasoning did not show any impairment and his response in this area was generally adequate.

Clinically the defendant showed no evidence of any psychosis at the time of the interview and there was nothing from his description of the events surrounding the alleged offenses which would indicate that he was suffering from any major mental illness at that time. The discrepancy of his statements given to me and the statements given to the members of the Public Safety Department are asen as being due to his

conscious desire to exclude the other two individuals from his involvement at this time, or to include as involved at the time of the statement to the Public Safety Department officers. It is not as important from a psychiatric stand point as to what the defendant says, but rather the manner in which he states it.

The defendant did relate to me that he had given himself up. He related that he was aware that the police were watching the house, but he was able to leave the house by blending in with some school children who were passing by early in the morning. He spoke about how he had called another brother and asked him to drive by the house to see what was happening. After his other brother did this, he contacted the brother. The defendant states he was concerned that something would happen to his half-brother Winkie, and for this reason he gave himself up. He seemed to want to make the point that his half-brother was not involved in the alleged offense.

It is my opinion that presently the defendant is able to assist counsel in his defense and understand the nature of the charges against him. It is felt that the defendant possesses both a rational and factual understanding of the charges. It is further felt that the defendant at the time of the alleged offense had the substantial capacity to appreciate the wrongfulness of his conduct and to conform his conduct to the requirements of the law.

Signed: Sanford Jacobson, M.D.

DECLARATION (EXHIBIT 17)

I, George W. Barnard, hereby declare under pain and penalty of perjury:

1. I am a psychiatrist who was requested by Richard Shapiro, the attorney for David Washington, to interview Mr. Washington. My resume is attached to this Declaration.

2. On May 10, 1980, I interviewed David Washington at the Florida State Prison. During this interview, David expressed that he had a guilty conscience about the murders and often wakes up crying. I detected remorse in David and observed that he seemed to feel very badly over what had happened.

3. David described to me that his parents were separated when he was two years old. He was raised with his mother and his grandmother and was sent back and

forth between them. As he was growing up, he got along with his mother, but he was beaten very badly by his stepfather, and he still has scars on his back from where the stepfather had beaten him with an ironing cord. He also told me that the stepfather beat one sister so badly that she ended up in the hospital, and his stepfather had intercourse with another sister.

4. On psychiatric examination, there was no indication of psychosis.

5. It is my medical opinion that, at the time these capital felonies were committed, while Mr. Washington was not under the influence of extreme mental or emotional disturbance, he was chronically frustrated and depressed because of his economic dilemma wherein he was unable to find employment and provide for his wife and children.

6. It is postulated that his childhood of emotional deprivation, severe physical abuse and extreme violent actions towards him laid the groundwork for the resentment and rage which was triggered by factors in his adult life over which he felt he had no control, and his rage was displaced onto individual's who happened to be present at the time and not directed to persons who had directly caused him suffering. In effect, he had been conditioned by the extreme degree of cruelty and violence to which he had been subjected as a child to act in a violent mode when faced with circumstances over which he had no control in his adult life.

7. Since he has been in prison, he has gained some understanding of himself and realizes that at the time of the crimes there could have been other

alternatives or options to choose; however, because of his upbringing, he did not think or feel at that time, but instead acted on impulse.

8. Since he has been in prison he has lost his bitterness and has found some positive things for himself in that he now can feel and can think things out rather than merely acting on impulses. When I interviewed him, I did not perceive any of the well of frustration or rage in him.

DATE: September 4, 1980

GEORGE W. BARNARD, M.D.

DECLARATION (EXHIBIT 16)

I, David Lane, do hereby declare under penalty of perjury:

1. I am a psychologist who was requested by Richard Shapiro, the attorney for David Washington, to interview Mr. Washington. My resume is attached to this Declaration.

2. On March 19, 1980, I interviewed Mr. Washington at length at Florida State Prison and administered some psychological tests to Mr. Washington.

3. David Washington's behavior throughout our time together was polite, courteous and fully cooperative. He did weep a few times when he was talking about his crimes or his wasted life.

4. David Washington advised me that his childhood was characterized by frequent moving and by periodic shifts between

the home of his grandparents and the home of his mother and step-father. His grandparents fought a great deal, and on occasions his grandfather would get drunk and beat up his grandmother.

5. He described his life with his step-father and mother in even more bleak and frightening terms than life with his grandparents. He told me that his step-father used to line up whichever children he had decided to punish and beat them with an extension cord or other strap for extremely long periods. David's earliest memory is of his step-father beating him.

6. I administered four subtests of the Wechsler Adult Intelligence Scale to obtain an estimate of David's current intellectual functioning. I obtained an estimated Verbal Intelligence Quotient

of 88, which is in the low average range, at about the twenty-first percentile for the general population.

7. I also gave David several cards from the Thematic Apperception Test. This test consists of ambiguous drawings of people in various relationships and activities. The themes which emerged from his responses may be summarized as follows:

(a) self-pity: for being a have-not; for never having had anyone who cared enough for him to push him, guide him, explain things to him; for having been beaten and abused, especially by his step-father;

(b) remorse and self-condemnation: for his crimes; and

(c) despair.

8. I also administered the Rotter Incomplete Sentence Test to David. The themes which emerged from my analysis of David's sentence completions may be summarized as follows:

- (a) regret, shame and remorse;
- (b) self-pity: a feeling that people didn't care about him; and
- (c) pride: in recent accomplishments in learning and in self-discovery.

9. From my observations, it is my opinion that David is not a psychopathic personality. I believe he had and does have a conscience. However, his capacity for sympathy and empathy, for deeply caring about others, seems to be severely limited. He seems to have grown up with a view of himself as bad and unloved (and therefore unlovable). I do not believe he was aware of this view of himself on a clear, conscious level. I believe that this view of himself developed, in part, as a reaction to the childhood experiences of being shunted back and forth from grandparents to mother-and-step-father, with the probable feeling of being unwanted in either home, and of being beaten and of

having extremely meager communication with adults. Early in life, I believe, he learned to see himself as evil, unwanted, unlovable. And he acted in accordance with this self-concept. Children who are deeply troubled and feel unloved often act out in apparently wanton destructive behavior.

10. I don't believe that there is any evidence to support the view that David was legally insane or, psychiatrically speaking, insane at the time of the crimes. He was evidently experiencing his life as extreme and unbearable pressure, because of his poor family and economic situation. He was feeling panicky and was wholly incapable of handling major adult responsibilities. His reaction to this stress was to act in a highly panicked and frenzied state at this stage in his life.

11. As best as I can judge from my interview, David was experiencing a high level of anxiety and a sense of incompetence and frustration at the time the crimes were committed. Those feelings seem to have been so intense that he was unable to think of any sensible solutions to his problems. This is a result of the fact that as a child he never had any examples provided to him or role-models of good problem solving approaches to life.

12. I feel that David's deep-seated view of himself as evil and his repressed powerful urge to revenge himself for his mistreatment as a child finally erupted into mindlessly brutal destruction of lives. I hypothesize that in some unconscious way he saw his victims as stand-ins for all those who had hurt him in the past.

13. I don't believe that David got any pleasure out of the crimes on any level of awareness except perhaps for some vague sense of relief of frustration. Emotionally, he seems to have been numb throughout those twelve days, operating in a kind of trancelike phase, and only coming to an awareness of what he was doing when he suddenly realized he was killing Frank Meli.

14. In my opinion, during this period David was so wrapped up in immediate survival needs and his overwhelming responsibilities that he was immobilized with a sense of inadequacy to cope with his problems.

15. David did not give me the impression of being a cynical, sardonic, cold-blooded killer, but was more like an ashamed, confused and remorseful child.

DATE: September
4, 1980

DAVID LANE, PH.D.

IN THE CIRCUIT
COURT OF THE
ELEVENTH JUDICIAL
CIRCUIT IN AND
FOR DADE COUNTY,
FLORIDA

CRIMINAL DIVISION

THE STATE OF FLORIDA,)

Plaintiff,)

vs.) CASE NOS. 76-8300

DAVID LEROY WASHINGTON,) 76-9542

Defendant.) 76-9543

76-8646

Metropolitan
Justice Building,
Miami, Florida,
Wednesday, 9:00
a.m., December 1,
1976.

The above-entitled cause came on for
plea before The Honorable Richard S. Ful-
ler, Circuit Judge, pursuant to Notice.

- - -

APPEARANCES:

RICHARD E. GERSTEIN, State At-
torney, by HENRY ADORNO, Assis-
tant State Attorney,

PHILLIP A HUBBART, Public Defender, by WILLIAM TUNKEY, Specially Appointed Public Defender
Attorney Defendant.

- - -

MR. ADORNO: We are here on 76-8300.
State of Florida versus David LeRoy Washington; 76-9542, also against David LeRoy Washington; 76-9543, State of Florida against David LeRoy Washington; and 76-8446. It is the State's understanding that Mr. Washington is going to withdraw previously entered plea of guilty as charged to the indictment in all four cases with the exception that 76-8646 he would be only entering a plea to Count 2, battery on a law enforcement officer. If the Court accepts the plea, the Court would abandon Count 1, attempted escape.

THE COURT: Mr. Tunkey.

MR. TUNKEY: Judge, if I may make several announcements.

The defendant is before the Court charged in an indictment as Mr. Adorno said in three separate cases starting with 76-8300 where the defendant is charged along with Nathaniel Taylor and Johnny Gary Mills with first degree murder, kidnapping, ransom, robbery, conspiracy to commit robbery.

The defendant at this time will change his previously entered pleas of not guilty to those counts and enter a plea of guilty to the Court.

As to 76-8542 wherein the defendant is charged in an indictment with six counts, the defendant will change his previously entered pleas of not guilty as to those six counts and tender pleas of guilty to the Court.

As 76-9543 wherein the defendant is charged by indictment with two counts, first degree murder and robbery, the

defendant is going to change his previously entered pleas of not guilty and tender a plea of guilty to the Court.

As to 76-8646 wherein the defendant is charged in Count 2 with battery on a law enforcement officer in which he previously entered pleas of not guilty, he will now enter a plea of guilty to the Court.

There are no negotiations as to what sentence the Court may impose. The only negotiation--the only agreement is, number one, the defendant is waiving, obviously, trial by jury; also, as to any penalty phase on 76-9543, 76-9542 and 76-8300. That is with the agreement and acceptance of the State of Florida. Of course, as to 76-8646 no waiver is necessary. This is a non-capital offence and a plea of guilty is being tendered.

The defendant and I have discussed these proceedings on numerous occasions both here in the courthouse and in the jury room, and on numerous occasions at Dade county Jail. I would like to put on the record that initially I was appointed to represent Mr. Washington with respect to Case No. 76-8300 by the Court there having been declared a conflict by the office of the Public Defender.

The Court appointed me to represent Mr. Washington with respect to that case, alone. I subsequently had numerous conversations with Mr. Washington with respect to 76-8300 and, again, diligently prepared in that matter for trial.

Subsequent to my appointment on that case, and, also, thereafter on 76-8646, the defendant was advised by me on another two and perhaps three occasions that with

respect to any purpose, whether it be for a court order or any other reason, that if anybody wished to speak with him, that he was not to speak. He was not to write anything to anybody absent my presence. I even gave that to him in written form.

The defendant, however, chose when he was confronted with the allegations presently contained in 76-9543 and 76-9542 to speak with agents of the State of Florida, to wit: sheriff's officers or sheriff's deputies of the Dade County Public Safety Department.

I have seen the written statements which he has given with respect to his culpability in those two matters. I have examined carefully the waiver of rights executed by Mr. Washington which in each case went so far even as to ask Mr. Washington if he desired to have me present

at that time, the police officers acknowledging to him that they were aware that he had counsel; also as to 76-8300 acknowledging to him that they knew who his counsel was. In subsequent conversations with Mr. Washington there was a waiver of the presence of counsel and, more specifically, of myself.

I have filed in each of the indictments as to each of the indictments motions to suppress which I have joined two motions to motions to suppress physical evidence. I have filed in behalf of Mr. Washington motions to suppress the statements, admissions, and confessions.

However, it is my considered judgment that there was a free and voluntary waiver of counsel in each case. There was a waiver of his various constitutional rights to remain silent, to the assistance of counsel, et cetera. I have discussed

this with Mr. Washington. I believe he agrees with me.

The defendant in effect has-- and I am not coming down on David Washington because I believe he has stepped forward and admitted his culpability and he has admitted that he has assented for lack of a better word--I am simply trying to tell the Court that but for the defendant's statements to the police officers in 76-9542 and 76-9543, my advice to the defendant in all probability would have been that we should go to trial.

In my estimation he has both expressly and tacitly overridden my advice. When I say tacitly, I mean by the fact that he went forward and gave full confessions or admissions to 76-9542 and 76-9543; and expressly in a sense that we have discussed this plea today on numerous occasions. It is Mr. Washington's desire

not to contest the charges.

He has, in my estimation, never contested the charges from the initial onset of these proceedings. I would like to--and perhaps this is not the appropriate time to--point out to the Court that Mr. Washington surrendered to the police in 7608300. He cooperated with the police and I am sure this will be brought out in any hearing prior to sentencing.

I do not know and I want to tell the Court that Mr. Washington has expressed to me a desire to testify first of all, obviously, on his own behalf with respect to any sentencing. Number two, he has expressed to me a desire to testify wherever or whenever with respect to any of the allegations contained in 76-9542 or 76-9543.

THE COURT: Does the State want to put in the record any factual basis on

each of the indictments?

MR. ADORNO: Yes, Your Honor, I would.

Judge, I have already had these marked for identification. Copies have already been submitted to Mr. Tunkey.

I am taking these by time as they occurred. The first one would be 76-9543 marked as State's Exhibit on the plea No. 4. It is a statement taken by Detective Majors of the Public Safety Department of the defendant, David LeRoy Washington. I would like to show a copy of the original statement to the defense counsel and to the defendant and I would like to inquire of the defendant if, in fact, that statement was given by him to Detective Majors and if it was freely and voluntarily given.

MR. TUNKEY: I think that would be premature.

THE COURT: Hold a second. Go ahead and swear the defendant.

[Thereupon, the defendant was sworn.]

THE COURT: I think it might be appropriate if first of all you give us a very brief factual basis of that charge and, then, we will ask Mr. Washington to verify that this is the statement he gave.

MR. TUNKEY: Judge, I do not object to the procedure of utilizing the statements of Mr. Washington to support the pleas being entered at this time.

I think that Mr. Washington should be voir dired by the Court prior to any questioning concerning his statements. I am sure once that has been accomplished we can then ask Mr. Washington whether he has had a chance to review these statements.

THE COURT: I want to hear a factual

basis first. I will chat with Mr. Washington concerning his participation after that.

MR. ADORNO: In 76-9543, the count of first degree murder and robbery, the defendant on September 20, 1976, agreed with another Negro male---

THE COURT: He cannot--I am going to ask him questions about this, Mr. Tunkey. You may chat as much as you want to. Do you want to talk with him a minute?

MR. TUNKEY: No.

MR. ADORNO: On September 20, 1976, the defendant, David LeRoy Washington, along with another Negro male who has not been indicted or arrested on this charge conspired to rob a Reverend Dan Pridgen. This individual met with David LeRoy Washington at his house. Based upon this agreement the other Negro male came in contact with Daniel Pridgen and

made an agreement to go to the victim's home which was located at 2773 Northwest 57th Street, Apartment No. 8, Miami, Florida.

Based upon the agreement the other Negro male gained entry into the house of the victim. They were about to engage in a homosexual act. At that time the victim had already undressed and the other individual was about to undress.

At that time the defendant, David LeRoy Washington, entered the home and proceeded to stab the Reverend Pridgen to death. After Reverend Pridgen was killed they ransacked the home and both individuals took a small amount of cash, some jewelry, a .22 caliber pistol, and the victim's automobile.

The .22 caliber pistol was subsequently recovered by the police when

they investigated the Meli homicide. That pistol will also be shown to have been used in the second homicide of Katrini Birk.

The statement I have shown Mr. Tunkey is the statement given by Mr. Washington, basically, relating the facts I have just repeated to the Court. It was taken at 4:10 p.m. at the homicide office in the presence of Detective Chuck Majors and Detective Dave Simmons.

I would ask the defendant at this time whether he recognizes that as being a copy of the confession he gave and as to whether he, in fact, gave that statement and whether it truly and accurately depicts his participation in that homicide.

MR. TUNKEY: I think it is still premature and I reserve that question.

THE COURT: I think he can answer

that question. It will either be satisfactory to the Court that he is here freely and voluntarily or not.

MR. TUNKEY: Based on the Court's ruling, David, do you see before you the copy of the 14-page statement?

THE DEFENDANT: Yes.

MR. TUNKEY: Do you recognize the signature on the last page?

THE DEFENDANT: Yes.

MR. TUNKEY: Is it yours?

THE DEFENDANT: Yes.

MR. ADORNO: Did you give that statement?

THE DEFENDANT: That is duplicate, yes. I gave that statement.

MR. ADORNO: Did you give it freely and voluntarily to Detective Majors and Detective Simmons?

THE DEFENDANT: Yes. I did.

MR. ADORNO: Do you recognize Detective Simmons seated over there?

THE DEFENDANT: Yes. I do.

MR. ADORNO: Did he at any time promise you anything or coerce you to give the particular statement?

THE DEFENDANT: No. He didn't.

MR. ADORNO: Does the statement under oath truly state the actions you took part in the killing of Daniel Pridgen?

THE DEFENDANT: Yes. It does.

MR. ADORNO: I move it into evidence for the purposes of the plea.

THE COURT: It will be received for the purposes of the plea.

[Thereupon, the statement referred to was marked as State's Exhibit No. 4.]

MR. ADORNO: In 76-9542, The State of Florida versus David LeRoy Washington, the defendant is charged in Count I with first

degree murder and in Counts II, III, IV attempted first degree murder; Count V is robbery; VI is breaking and entering a dwelling and assaulting a person lawfully therein.

Judge, the particular homicide took place three days after the Pridgen homicide. On September 23, 1976 in the evening hours approximately the time that the Carter/Ford debates were taking place, the defendant went to the home of Katrina A. Birk, 10351 Northwest 28th Avenue, Miami, Florida, the defendant knowing Katrina Birk on previous occasions, the defendant having gone over to Katrina Birk's husband's establishment to sell furniture there and selling some used property to her husband.

He waited outside until an appropriate moment. Then, he broke into the house. Inside the house were Katrina

Birk and three sisters who are Ruth Pitzer, Julia Sullivan, and Georgia Griffith.

These three individuals were down from Indiana visiting Mrs. Birk while her husband was in the hospital convalescing from an injury.

The defendant tied up all four of the females in the house. Their ages range from age 64-73. He was able to obtain from Mrs. Birk a tin can that contained a small amount of cash. That tin can was subsequently found by the police when Mr. Washington took the police out and they were able to obtain it.

After obtaining this particular amount of money the defendant then proceeded to stab and shoot all four of the female occupants in the house. As a result of the stabbing, not the bullet wound, Mrs. Birk died.

Mrs. Griffith is in a coma as a

result of the stabbing and shooting and is presently under hospitalization in Indiana.

Mrs. Pitzer and Mrs. Julia Sullivan have recovered from those particular wounds and are now again living in their home town in the middle part of Indiana.

The defendant fled the house and subsequently confessed to that particular case.

I would like to show the defendant what is marked as State's Exhibit on plea No. 3 and ask him whether he remembers giving that particular statement to Detective Dave Simmons of the Public Safety Department.

THE DEFENDANT: May I be allowed to speak, Judge?

THE COURT: Yes, of course.

THE DEFENDANT: On this case I am going to plead guilty, you understand what I'm saying. I'm going to plead

guilty. I did, so I will. I taken a person's life. I did take it when I went into that house.

What I'm saying, my intentions was to tie these people up. I wouldn't have cut the cord to the phone if I was intending to harm them. I wouldn't have tied them up and gagged them.

After I got into the house-- when you are committing a robbery anything can go wrong. It didn't go like--I thought Mrs. Birk had something in her hand and I started shooting up the place.

I'm guilty on the charge.

THE COURT: Thank you for your statement.

MR. ADORNO: Is that the statement you gave Detective Simmons?

THE DEFENDANT: Yes. It is.

MR. ADORNO: Does it correctly state your participation in the homicide?

THE DEFENDANT: Yes.

May I say one other thing?

As to Mrs. Katrina Birk's case, I was dealing with her merchandise. I would like the Court to know that Mrs. Katrina Birk and husband was dealing-- they dealt with hot merchandise. That is the way I got to know Mrs. Katrina Birk and her husband.

They had a little shop set up. It was more hot merchandise into this place than it was legal merchandise.

THE COURT: All right.

MR. ADORNO: Mr. Washington, did Detective Simmons or Majors promise you anything or in any way induce you to give this statement?

THE DEFENDANT: No. They haven't.

MR. ADORNO: I would also like to show you what has been marked as State's Exhibit No. 2, a short statement given by

the defendant to Detective Simmons after he took him out to locate the revolver and some of the property in the Pridgen and Birk homicide.

Mr. Washington, do you recognize that particular statement?

THE DEFENDANT: Yes. I do.

MR. ADORNO: Is it true and correct as to what is stated therein?

THE DEFENDANT: Yes. It is.

MR. ADORNO: Did Detective Simmons or Majors coerce you or promise you anything in return for your giving the particular statement?

THE DEFENDANT: No. They didn't.

MR. ADORNO: Judge, the final case is 76-8300. The defendant is charged along with Nathaniel Taylor and Johnny Gary Mills with first degree murder, kidnapping for ransom, robbery and conspiracy to commit robbery.

The basic facts of that is that on September 27, 1976, the defendant, David LeRoy Washington, contacted the victim, Frank Vincent Meli, reference purchasing a '74 Camaro which Mr. Meli was selling. Based on that conversation it was agreed that at approximately noon he would meet the victim at the Northside Shopping Center for the purposes of looking at the car and to make a determination as to whether to buy the car.

The meeting took place on Tuesday, September 28, 1976. The defendant took the car for a test drive and informed Mr. Meli that he had to go to his house in order to get the money to pay him for the car. Mr. Meli accompanied the defendant to 6520 Northwest 29th Avenue.

He induced Mr. Meli to go inside the house where at that time a knife was

produced by the defendant and he requested the victim to go into the back room, the southwest bedroom of the house, where he was tied up and he was then worked over by the other two co-defendants.

As alleged in the indictment the defendant at that time left with the victim's identification, some of the cash that the victim had in his pockets which was taken after he was tied up, and the victim's watch. He then took the '74 Camaro and went to several car dealerships.

Unable to sell the car, he finally arrived at Tally Embry Ford and was able to sell them the car for \$2,600. A check was made payable to Dolores DePropo which was the victim's mother who had the car registered in her name.

The defendant returned to the residence. He got the victim to endorse his signature on the check as well as

sign his mother's name. He then went to the Southeast First National Bank and was unable to get the check cashed, the cashier saying that he needed more identification with respect to Dolores DePropo.

The defendant then returned to the house. At approximately 1:55 a.m. the defendant transported the victim to a local corner telephone booth and made a ransom demand to the victim's brother saying that for the return of his brother he was to put \$2,700 in a bag and drop it at Northeast 27th Avenue and 79th Street by the Dempsey Dumpster.

On Wednesday, the police made preparations to make that particular drop. On the Wednesday the defendant returned to tell Embry Ford and had them okay the cashing of the check. That was done around noon time.

The defendant returned to Southeast First National Bank and was able to get the check cashed and received \$2,000 in small bills.

He then returned back to the residence. At that time he divided the money up, \$2,00 to Johnny Mills, \$230 to Nathaniel Taylor. At that time both of these individuals left the house. It was at that the defendant murdered Frank Vincent Meli by stabbing him to death. I believe the medical examiner's protocol states there were eleven stab wounds, I believe, five of them would have been fatal, subcutaneously, the others fatal by process of bleeding to death.

Upon the completion of the murder of the victim in this case, the defendant Washington left the house and went to the drop area which was set for three o'clock. He went to the drop area.

He was, in fact, observed there; was, in fact, photographed at the drop area at that time the police not knowing who he was and, then, he got "hinky" according to his statements that the police were there and did not make the drop pickup and went back to the house. With the assistance of Nathaniel Taylor he buried the victim under a tree in back of the house.

On Thursday he purchased a motorcycle from the proceeds of cashing the check. He purchased the motorcycle from Harry Sollen.

On Friday morning the police were able to zone in on the area by finding the taxicab driver who drove the defendant on one of the trips to the bank. Subsequently, they found the body in the backyard of David LeRoy Washington's place and he surrendered himself at 2:30 p.m.

Later on that afternoon he gave a full statement to Detective Zatrepalek and Artie Feldman at the Public Safety Department.

I would like to show the defendant a copy of that statement given to Detective Zatrepalek and Sargeant Feldman and aks the defendant if he recognizes that as being a copy of the original statement he gave.

THE DEFENDANT: Yes. I do.

I would like to speak before he says anything On the Frank Meli case, I'm guilty. I stabbed Frank Meli but I didn't stab him eleven times. I'm the cause of his death. Frank Meli stayed with me two full days. We watched a fight on TV. He ate. I went out and bought him food.

I'm on trial for me, not nobody else. I'm guilty of that crime. All I can say is--

THE COURT: For the purposes of this plea, Mr. Washington, the Court is concerned with whether or not you inflicted the wound upon Mr. Meli and that it was your desire and intention to effect his death.

THE DEFENDANT: Yes. I did.

THE COURT: As relates to the contents I am not asking you about other participants in that case, although, their counsel are here and present. I am only concerned that the statement that you have given in this case was freely and voluntarily given by you and that it was not given as a result of undue or any pressure by the police department and that no offer of reward or threats were in any way involved in the giving of the statement.

THE DEFENDANT: It wasn't.

Can I say one other thing?

THE COURT: Sure.

THE DEFENDANT: I have been living right here in Dade County for eleven years and up until September of this year I never was arrested in Dade County for anything.

You fault me for the crimes I committed, but you got to go a little further back and see why I did commit these crimes.

THE COURT: I intend to. I am only here right now for the purpose of determining whether or not there is a factual basis for the pleas you are making in this case and whether or not it is what you want to do and that you are doing it under the right circumstances.

We will go to the penalties and those matters some other time.

MR. ADORNO: Mr. Washington, do you recognize the Detective Zatreplek seated

to your left?

THE DEFENDANT: Yes. I do.

MR. ADORNO: Did he or any other people of the Public Safety Department or State Attorney's office give you undue pressure or coerce you to give the statement that is marked as State's Exhibit on Plea No. 1?

THE DEFENDANT: No. They didn't.

MR. ADORNO: Finally, in 76-8646 the defendant entered a plea of guilty to assaulting a law enforcement. The factual basis for that particular, I believe, is that after arraignment in your court here on October 13, 1976, on the way to go back to the holding cell, back to the Dade County Jail, this particular individual assaulted and did batter one James Birch, a corrections officer and deputy sheriff with the Dade County Safety Department.

THE DEPARTMENT: May I be allowed to speak on that one, sir?

My intentions was not to escape. It don't make sense if I give myself up. The officer was laughing about my case in the cell and we coming in here for my life.

My intention was not to jump on the other officer. My intentions was to jump on him. That was it.

THE COURT: That was the young man that was in my court and it was his first day.

THE DEFENDANT: My intentions was not to get him, but I got him.

MR. TUNKEY: For the record indicating Mr. Ciaburro.

THE COURT: He was a new corrections officer back there and I have not seen him since.

THE DEFENDANT: I wasn't trying to

escape.

MR. ADORNO: One further question.

Mr. Washington, do you recognize Detective Harry Spiegel of the Public Safety Department seated to my left?

THE DEFENDANT: Yes. I do.

MR. ADORNO: He is the lead investigative officer on the Frank Meli homicide.

Did he or anybody at the Public Safety Department make any promises or inducements for you to give any statements you gave?

THE DEFENDANT: I gave them all freely and voluntarily because I committed a crime and it was on my conscience.

THE COURT: Mr. Washington, how far did you go in school?

THE DEFENDANT: As far as school is concerned, I went to the tenth grade.

THE COURT: And your age is what?

THE DEFENDANT: I am 26 years old.

THE COURT: There seems to be question in my mind as to why some people are willing to admit their violations of the law and some people are eager to do so. Is there any other reason that you like to tell me as to your obvious eagerness to admit your responsibility in these cases other than that which I heard?

THE DEFENDANT: Like I said, Judge, I have been living here in Dade County for eleven years and in my neighborhood I was well-respected.

I got laid off of my job in October '74 and I got a wife and two kids that I love and they put me on unemployment compensation.

That ran out this year. My just had a baby in September. I didn't even have Pampers to put on my baby's behind.

THE COURT: Relax. We have all day,

my friend. You just relax.

THE DEFENDANT: My intentions was not to hurt anybody on two of these cases with the exception of the one.

I go to church and I believe in God and all of this. I want to say that Reverend Daniel Pridgen, I meant to stab him. I can't dig a man preaching in the church every Sunday and a homosexual. When I was stabbing, that was all that was going through my mind was him getting up on the pulpit every Sunday and taking these people in the pulpit money and he was a homosexual.

Like I say, I been here eleven years and I never been in the Dade County Jail, nothing but a traffic violation.

You take my job away from me--

THE COURT: Sometimes we got folks, Mr. Washington---

THE DEFENDANT: --and I got a wife

and kids and I had a wife and kids--maybe that wasn't the way I should have gone about it. That is the first time I committed a crime. I panicked on a lot of these things.

As far as I'm concerned I might not get another day on this earth. I am looking for whatever is in store for me, if I die or whatever in another world, you see what I am saying, but my intentions was not to hurt anybody else.

My wife was supposed to have a baby in September. She had the baby. Okay. I panicked. I had no money. I couldn't--nobody to turn to. Welfare pays \$74 a month and me sitting outdoors. I didn't--I done hollered to momma so much they were tired of me. I was looking for work and they was thinking I'm not looking for work. If you check with the

unemployment office I was there almost every day. The jobs I found work me a day or two. My wife has a baby and it sneaked up on me. I went to the hospital to see her at Jackson Memorial Hospital.

She was telling me all the things that she needed for the baby because at Jackson they bring the baby in the world but they don't provide the things.

She was telling me all the things she needed and I said, "Yes, baby. I'm going to get it." I didn't have no way to get money. I committed crimes and people got killed. All I got to say is if David Washington had a job you wouldn't see me here today.

THE COURT: The first professional involvement we had in this case was the time I learned the matters were assigned to our division. There was a conflict

presented by the Public Defender's office and at the time we provided counsel for the people involved in, I think, the 8300 case and Mr. Tunkey was one who was highly competent and who specialized in the field of criminal law.

Are you satisfied with the way he worked your case?

THE DEFENDANT: I want to say this. I think this is about one of the best lawyers you could ever get. But for the crimes I feel I was 100 percent--I was guilty. I would have gave up. I believe I would have got with my wife and I would have come forth with the evidence anyway. He didn't have no grounds to fight it on. I don't believe in telling no lies. You understand what I am saying?

THE COURT: As an officer of the court, it is his responsibility to take the legal steps necessary for the

protection of his client's interests.

THE DEFENDANT: I understand.

THE COURT: Do you understand that by pleading guilty you, in fact, stop that work that he is doing and those steps that he may have made be they technical or otherwise. Now, he is foreclosed from doing them.

THE DEFENDANT: Yes, sir. I understand.

I want to say this. Like I say, you can't get a better lawyer. He didn't have any grounds to fight on because I gave a confession.

THE COURT: He mad himself available at the time you wanted to see him?

THE DEFENDANT: He was there. He was always there.

THE COURT: You have no reason to indicate to me anything other than you

would have me appoint him on another case?

THE DEFENDANT: I tell you this, if it was left up to him, he would fight this to the Supreme Court. But, I told him I would rather go ahead and plead because it don't make sense to try to hide it when I know I'm guilty.

THE COURT: Do you understand that by constitution all of us within the border of this fine country are given a number of rights because we are here? Do you understand that you have an absolute right to remain silent or keep your mouth shut, any way you want to say it, and not say a thing or do a thing that would in any way point a finger of guilt at yourself? Of ocourse, you have signed those statements. The question of their admissability is resolved by your pleas, but I want you to understand that you

have the right to remain silent. You do not have to admit your guilt in this case.

Do you understand?

THE DEFENDANT: I want to say this, Judge. I didn't have no right to take these people's lives. I think it is best for me to come forth with it. Like I say, I do believe in God. Maybe I will go somewhere else when I leave the world. I don't want to do it with this on my conscience.

THE COURT: I am concerned, before we talk about penalties, that you have the absolute right to remain silent and not say a word and that you understand those rights.

THE DEFENDANT: I understand.

THE COURT: Do you understand?

THE DEFENDANT: Yes. I do.

THE COURT: You also have an absolute right to have a jury trial in open court,

like this, with competent counsel representing you and examining and cross-examining those witnesses that are the ones that caused the charges to be brought against you.

Do you understand those rights as to the Constitution?

THE DEFENDANT: Yes. I do.

THE JUDGE: By telling me, "Judge Fuller, I am guilty of these charged" you are giving up those constitutional rights. Do you understand that?

THE DEFENDANT: I understand that.

THE COURT: You also have a right under our law to have a jury impaneled for the purpose of determining or making a recommendation to the Court as to what penalty would be involved in this case. They would be impaneled. They would hear testimony that would relate to the aggravating circumstances of the crimes involved.

They would hear evidence as relates to any mitigating circumstances, your background, and whatever other things might be covered by an enumerated list.

Do you understand that?

THE DEFENDANT: Yes. I do.

THE COURT: Mr. Tunkey has discussed that with you, has he not?

THE DEFENDANT: Yes. He has.

THE COURT: By saying, "Judge, I don't want a jury to make a recommendation. I want you to hear it," you are giving up the right you have to have a jury do that.

Do you understand that?

THE DEFENDANT: Yes. I do.

THE COURT: It is your desire to have me and me alone to determine your fate. Is that what you are saying?

THE DEFENDANT: Yes. I do. I understand that.

THE COURT: Has Mr. Tunkey and Pollack or anybody involved in these conversations given you any indication as to what results I would arrive at in this case.

THE DEFENDANT: No. I Haven't.

THE COURT: Has anybody told you I am a soft touch or else go for this or that or something for the purposes of getting you to plead?

THE DEFENDANT: I want to say one thing, Judge. No. He hasn't. When a person comes before you he just about knows what he is going to get.

THE COURT: I am not sure whether that is good or bad.

It is obvious you are aware, at least through Mr. Tunkey, that my normal feeling in cases involving crimes of violence is that I give the maximum sentences.

THE DEFENDANT: Yes. I do.

THE COURT: You may just as well get the death penalty from me as not. I will follow the law. I am not one of those judges that will automatically not give the death penalty. Do you understand that?

THE DEFENDANT: I do.

THE COURT: These ocunsel and officers of the Court will stay strictly away from me. There will not be a bit of discussion about your case, I can guarantee it, outside this courtroom, and I don't want you ever coming back here, if in fact it whould be determined that I find the aggravating circumstances outweigh the mitigating circumstances and sentence you death, and hear Mr. Tunkey or Pollock say somebody told you that was not what I was going to do.

THE DEFENDANT: Yes, sir. I understand.

THE COURT: Has anybody told you there was any deal involved in my court?

THE DEFENDANT: No, sir.

THE COURT: I would sure like you to tell me if there was.

THE DEFENDANT: I would like to say this. I believe the crime fits the punishment and I don't want to die. You understand what I'm saying, but I say if I got to sit up in some jail and rot I would rather get the chair.

THE COURT: We will resolve the question of punishment. I want you to be satisfied that I have a great deal of respect for people who are willing to step forward and admit their responsibility. That is not an automatic key to the door nor is it anything else.

We will have a hearing on what the evidence is, but I do not want you to

be laboring under some pretense that is false that I let my feelings be known as to what sentence I would give in this case.

The only conversation I have had with these two lawyers whether or not I would hear this case without a jury and I told everybody I would hear every case without a jury as long as both sides would waive that right. I am not afraid of the case. I want you to understand that that is the extent of my involvement.

Have you any information that would lead you to believe that there has been anything more than that?

THE DEFENDANT: No. I haven't.

THE TUNKEY: I can put on the record--I am sure he will agree with me--that if anything I told him there is absolutely no guarantee as to what sentence; that it could be consecutive life terms with no

parole, or he could face the electric chair on each one. I told him I do not have any information concerning what the sentence might be.

As far as that area of the questioning, that has been our conversation on numerous occasions.

THE COURT: How is your treatment at the jail, Mr. Washington?

THE DEFENDANT: If you could do something about it, I wish you could get me out of the hold. I have been in the safety cell thirty days.

THE COURT: I think they are worried about you.

THE DEFENDANT: I don't know what it is, as far as my conditions is.

THE COURT: Are taking any medication?

THE DEFENDANT: No. I never mess with anything.

THE COURT: Do you suffer from any emotional problems that would interfere with your ability to understand what we have been talking about here?

THE DEFENDANT: I'm just as sane as anybody in this courtroom.

THE COURT: Nobody has forced you to do something or threatened you to do something that you do not want to do in this case?

THE DEFENDANT: No. They haven't.

Could I say one other thing just for the record. They say where I bought this motorcycle. This money, or the \$1,100, I bought a motorcycle with, but you can bet before I bought any motorcycle my wife and kids had everything they needed and wanted and I bought this motorcycle for transportation to try to look for a job. I made sure they had everything they wanted. It didn't make sense to take the

money and try to move into a place and try to live when they would have sent me out into the street again. That is what I want to say.

THE COURT: It is my understanding that the State is also in the position as it relates to the necessity of the jury for a purpose of making a recommendation to the Court. Whatever right the State may have, you also waived that right?

MR. ADORNO: We waive any right. We will present the evidence to the Court since you have the final determination anyway.

THE COURT: Are there any other questions, Mr. Tunkey, you would like to cover with Mr. Washington?

MR. TUNKEY: I would like to put on the record that there is still unresolved

a motion on each of the indictments to dismiss or, alternatively, to declare the Florida death penalty statute unconstitutional. We are not waiving any right as far as that motion is concerned.

THE COURT: Whatever the sentence of the Court would be would be subject to review and I have previously and will now for the purposes of completing your record determine at this time that the statute is, in fact, constitutional and, of course, by his plea Mr. Washington gives up whatever appeals he might have as to intermediate rulings of the Court or a finding of guilt by the jury. But, of course, he would have a right to appeal and I will advise him of that right at the conclusion of the sentencing hearing and my pronouncement of sentence in these cases. That will automatically be reviewed by the Florida Supreme Court under any circumstances.

What else did you want to say?

MR. ADORNO: Since the defendant is entering a plea of guilty on three counts of first degree murder, the only sentence would be life imprisonment in the State prison with no possibility of parole for 25 years, which is the minimum sentence, or death.

THE COURT: I am aware of that.

MR. ADORNO: I do not know if the defendant was told that by Mr. Tunkey.

THE COURT: I do not know whether he has or not.

From where you stand you can either end up with three death penalties. You can end up with a combination of any of them. Whatever it would be you would have no less than 25 years of imprisonment if I find the mitigating circumstances you would still end up with that much.

I am satisfied that Mr. Washing-

ton knows his cards are on the line.

MR. ADORNO: Did anybody on behalf of the State Attorney's office or police make you any promises that for your plea that any type of consideration would be given to your brother, Nathaniel Taylor, or the other defendant?

THE DEFENDANT: I would like to say this. No. They didn't, but I gave myself up because I gave myself up because I was guilty. It is up to you all to decide whether he was guilty or not. As far as I am concerned he was innocent.

THE COURT: As relates to the relationship of the defendant in court, I do not take into consideration and would not want a part of anything to be an agreement either to or not to testify. So, I want you to understand that this plea is made here because you feel you are, in

fact, guilty and for no other reason and that there have been no other considerations made to you for the purpose of inducing you to make that plea.

A No. There haven't.

THE COURT: Mr. Washington, I am satisfied as best I can be that you are an intelligent young man who certainly understands the seriousness of the charges that have been brought against you by the one information, and of course, the three indictments handed down by the grand jury;

That you understand that your plea in this case waives whatever constitutional rights you may have to remain silent and to attack anything that would relate to the grand jury;

To give up whatever attacks you may have had as a legal argument concerning confessions and all these other matters. I am satisfied that you know that

you have a right to trial by jury and that you freely and voluntarily waived that, I'm sure, in hopes that you might fare better with the Court than you would with the jury. But, that is a logical conclusion and all I can do is remind you that may not be the case.

It will be determined on the evidence here. I am satisfied that your pleas in this case as your statements were freely and voluntarily given. I have no indications to the contrary and if there is anybody that has such information in this courtroom, they should now let me know.

I am certainly satisfied you have been represented up to this point and will continue to be represented through Mr. Tunkey and I find him to be a very able and competent counsel and that you have had ample opportunity to discuss this

matter with him and, in fact, are entering pleas in this case that take away from him the opportunity of really being a lawyer that he would like to be for you.

But, I respect you for that and I think it speaks in your favor.

There certainly is a factual basis for the Court to accept your pleas in this case and on that basis I will do so.

Is there any indication by counsel as to the length of time necessary for the purpose of trying the sentencing aspect of this case?

MR. ADRONO: I believe, Judge, if we had a day and the Court started at a reasonable time at the conclusion of morning calendar, we should be able to get finished in a day.

THE COURT: I am in the middle of a case that will finish this week, but not

in time in time to try this case. I have no objection to setting it at the close of my calendar on Monday.

MR. ADORNO: That is fine. It will give me time to get the witnesses.

MR. TUNKEY: That is fine.

THE COURT: I am sure Mr. Washington would like to have terminated one way or the other at the earliest opportunity rather than worrying about it. We will go ahead and do that. We will set it down for trial after I call my morning calendar.

I would like to suggest to the people involved in the facts of this case and know information concerning it, each of you, to have ready for me at the time both of you rest proposed findings that would allude to both aggravating and mitigating circumstances. I do not want it beforehand, but I would like some facts by

way of written memorandum thereafter.

MR. TUNKEY: As to what the Court's findings should be?

THE COURT: No, sir. As to what you think the mitigating circumstances are based upon the outline set forth on the Supreme Court and the Committee on Jury instructions and the State will provide a proposal as to what aggravating circumstances they think have been established.

I have no way to tell you at this time as to when our decision will be. Is there anything else to be on the record?

MR. TUNKEY: I would like to have the Court enter an order recommending that the defendant be allowed use of the telephone at the jail so that he can secure the attendance of his wife. There is no problem as far as subpoenas. If he wants to, I

do not know that he wants to.

THE COURT: I do not get involved with Mr. Sanstrom's facility across the street any more than he gets involved in mine. I cannot evaluate the conduct.

MR. ADORNO: That will be no problem. If he wants, Detective Simmons will get a hold of his wife.

THE COURT: Whatever provisions can be made so that everybody is comfortable is what I would like to have happen. All we can do is evaluate by experience.

Are there any other findings you would like me to make?

MR. ADORNO: I would ask that Your Honor accept the plea and I would like to have the defendant adjudicated and fingerprinted.

THE COURT: Yes, sir. I think that should be done in all four cases.

MR. ADORNO: What is the status of the other two co-defendants?

THE COURT: I would anticipate they will not be tried until this case will be tried.

MR. ADORNO: Do you want to hear the motions?

THE COURT: If there are pending motions as relates to the others---

MR. DENARO: We have motions to sever the defendants Mills and Taylor, and motions to suppress which will require the taking of testimony and, I assume, the taking of testimony by the State in rebuttal. I think that could last a day. I do not know the State's intentions. I do not know whether they wish to try it immediately after the penalty phase of Mr. Washington's case or move for a continuance.

THE COURT: I do not know what

evidence there will be as relates to the penalties. That may make some difference as to whether the Court feels it should be tried at that time.

I will ask the State to please be on standby. In any case, I do not want to hear it until I have heard the sentencing hearing on Monday.

[Whereupon, the proceedings were concluded.]

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CERTIFICATE

STATE OF FLORIDA)

COUNTY OF DADE)

I, Margaret Rock, do hereby certify that a hearing for plea in the case of The State of Florida, Plaintiff, versus David LeRoy Washington, Defendant, pending in the Circuit Court of the Eleventh Judicial Circuit in and for Dade County, Florida, Nos. 76-8300, or 76-9542, 76-9543 &

76-8646, was held before The Honorable Richard S. Fuller, as Judge, December 1, 1976; that I was authorized to and did report in shorthand the proceedings and evidence in said hearing; and that the foregoing pages, numbered from 1 to 39, inclusive, constitute a true and correct transcription of my shorthand report of said hearing.

IN WITNESS WHEREOF, I have hereunto affixed my hand this _____ day of _____, 1977.

IN THE CIRCUIT
COURT OF THE
ELEVENTH JUDICIAL
CIRCUIT IN AND
FOR DADE COUNTY,
FLORIDA

CRIMINAL

THE STATE OF FLORIDA,)	
Plaintiff,)	NOS. 76-8300
		76-8646
vs.)	76-9542
		76-9543
DAVID LEROY WASHINGTON,)	
Defendant.)	

Metropolitan
Justice Building,
Miami, Florida,
Monday, 10:30 a.m.,
December 6, 1976.

The above-entitled case came on for
sentencing before The Honorable Richard S.
Fuller, Circuit Judge, pursuant to Notice.

APPEARANCES:

RICHARD E. GERSTEIN, State At-
torney, by RICHARD E. GERSTEIN,
Esq.,

AND

HENRY N. ADORNO, Esq., of Coun-
sel,

Attorneys for Plaintiff,

POLLACK, TUNKEY, ROBBINS &
ROSENFELD, by WILLIAM R. TUNKEY,
Esq., of counsel,
Attorneys for Defendant.

* * *

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THE COURT: We are here on the Washington matter. Let's go ahead, please.

MR. ADRONO: If the Court please, I would like to make a brief opening statement as to what the evidence tends to--

MR. TUNKEY: I will object to opening statements as not being provided by the rules, and I will ask that if he has any witnesses that he simply present them at this time.

THE COURT: Overruled. Both of you

will have ample opportunity. Go ahead.

MR. ADORNO: Judge, we are here on Case No. 76-8300, 76-9542, 76-9543. The evidence the State is going to present to this particular court to determine whether or not the court should sentence the defendant to death or life imprisonment is going to cover a thirteen day period in the life of the defendant. It will begin on September 19, 1976, and conclude with October 1, 1976. It is a thirteen day period when the State is going to show that the defendant committed three separate murders and attempted to commit three other ones. It is going to be a period, the evidence is going to show, that the defendant did not discriminate between his victims. It is going to show he killed both male and female, both old and young, both black and white. But there is one thing that is consistent to

all three of the homicides that the State is going to bring before the court, in that all three victims that were killed, at the time they were killed, were incapacitated and completely helpless. I believe that the evidence that we are going to present to you, Judge, is going to indicate that there are at least four to six aggravating factors present in all three cases. The first case, in the period of time, was the murder of Reverend Daniel Pridgen, which occurred on September 20, 1976. The evidence presented to the court is going to show that on September 19, 1976, a Sunday, the defendant, along with a friend of his by the name of Johnnie Mills planned to kill the Reverend Daniel Pridgen after robbing him. They met the reverend there at the local laundromat. Besides having his duties as a preacher,

he also ran a laundromat to supplement his salary. The evidence is going to show that the defendant not only intended to rob the victim but also made up his mind at that time that he was going to kill the victim because the victim was a homosexual and the defendant could not condone a preacher being a homosexual. The evidence is going to show that the plan was that Johnnie Mills would approach the victim and set up a meeting where Johnnie Mills would commit a sexual act on the reverend. Once inside the reverend's house, Johnnie Mills was to give a signal. He was to cough two times and at that time the defendant, David Washington, would run into the house and would kill the victim and then they would look for any proceeds from the robbery. The evening of September 20, 1976, the plan went into effect.

The defendant, along with Johnnie Mills, went to the reverend's house. They both went inside the reverend's house, had a brief conversation. According to the plan, the defendant excused himself and went outside and waited by the door for the signal of the two coughs. A few minutes later Johnnie Mills, having waited for the reverend to get undressed, took a pillow and placed it over the victim's head. At that time he coughed two times and the defendant came back into the house, carrying a butcher knife and stabbed the Reverend Daniel Pridgen to death. I believe the medical examiner will indicate that there are approximately ten to eleven stab wounds. At that time they ransacked the house. They found some money, some jewelry and the keys to the reverend's car, and in order to throw

off the police and in order for David Washington to let the community know that the reverend was a homosexual, they left writings on the wall indicating that fact and they left in the victim's car. They split the proceeds and subsequently abandoned the car. As to this particular case, the State submits that there are four aggravating factors. One, the murder was committed while in the commission of the robbery; two, the murder was committed for monetary gain; three, the murder was also committed to dispose of the only eyewitness to the crime, the only person that could finger David Washington and Johnnie Mills, thereby, there was an attempt by both of those individuals to prevent arrest and subsequent prosecution, and finally, that the facts in this case when the medical examiner finishes testifying will establish that this was clearly

a planned execution, a most cruel, heinous and atrocious crime. The day that the Reverend Pridgen was found, which was the 21st, also coincided with the arrival from Indiana of three sisters, Julia Sullivan, Georgia Griffith, and Ruth Pitzer. These three sisters, whose ages ranged from 68 to 73, flew down to Miami to visit their brother who was in the hospital convalescing from some injuries. They were met at the airport by their sister-in-law, Kay Birk, They stayed at Kay Birk's house on a Tuesday, on Wednesday. Thursday evening the four ladies were at home and they were watching the Carter-Ford debates. During the telecast of the debates, the defendant, David Leroy Washington, broke through the front screened door and came into the house wearing strips of cloth over his face as a disguise and brandishing what turned out to be a .22

caliber pistol. The defendant told the individuals that if they would not do anything he would not hurt them. He requested them to lie down on the floor. They told the defendant that Ruth Pitzer could not do that because she was suffering from Parkinson's disease. The defendant allowed Mrs. Pitzer to sit in the chair where she had a vantage point to watch subsequent actions of the defendant, Georgia Griffith was the lady down on the floor and her hands were tied behind her back. Julia Sullivan said that she could not because of her weight have her hands tied behind her back and her hands were tied in front. Ruth Pitzer was allowed to remain seated. The defendant then took Kay Birk into the kitchen where Kay Birk turned over a tin cup which contained an amount of money, I believe somewhere around \$80 to \$90. They came back and

Mrs. Birk got into a struggle with the defendant. The State alleges that the defendant produced the knife and stabbed Kay Birk. The medical examiner indicates there were approximately nine stab wounds. Kay Birk fell to the floor. The defendant then went and got a towel, wrapped the towel around the gun as a silencer and went to Kay Birk as she was lying on the floor and shot her one time, the entry wound being in the back of the head, jsut back of the right ear. Then he went and he shot Georgia Griffith. The bullet in Georgia Griffith went straight through from the side temple exiting the opposite side. Georgia Griffith was also stabbed. Julia Sullivan was shot while lying on the ground in the back of the head and stabbed one or two times on the side. Ruth Pitzer is the last one he went up to

Mrs. Pitzer, I believe, will tell the court that she pleaded with the defendant not to shoot her. The defendant responded by placing the gun to her forehead and firing one shot. The bullet fragmented and parts of the fragments still remain on her right eye where, as a result of that particular bullet, the wound, she has lost that sight. The defendant then kicked her, pushed her down and threw a chair on top of her. She does not remember being stabbed. However, the medical testimony was that she was in fact stabbed five times. The defendant then fled with the proceeds from the robbery. Mrs. Julia Sullivan had not lost consciousness, was able to crawl to the bedroom and call the police and rescue squad which arrived shortly after. The State submits in this particular case under those facts that there are six aggravating factors that the

court should take into consideration:

One, again, the murder was committed in the commission of a felony, to-wit: Robbery. Two, the sole motive behind this particular crime was pecuinary gain; three, this particular crime caused great risk to the safety of others as indicated by the fact that he killed or attempted to kill four individuals, four, that the conclusion of this offense and as the defendant stands before this court, he has now been previously convicted of another capital felony, having killed the Reverend Daniel Pridgen some three days prior; five, again, this crime was committed, as the other, to dispose of any of the eyewitnesses that could bring the defendant to justice and, lastly, again, the fact that shooting three incapacitated women, because they were tied and one suffered from Parkinson's disease, clearly established

that this crime was most cruel, heinous, and atrocious. Some approximately three to four days later, the Frank Meli case begins. On Monday, September 22, 1976, the defendant contacted Frank Vincent Meli, a 20-year-old University of Miami student, a senior, on the dean's list, graduate, in accounting. The victim, Mr. Meli, was selling his automobile, a 1974 Camaro. The defendant called him and told him that he was interested in buying the car and would he be kind enough to meet him at 12:30 p.m. on Tuesday. Based on that agreement the victim, Frank Meli, met the defendant. At that time the defendant told the victim, "Let's take the car for a test drive." After taking it for a test drive he told Frank that he wanted to buy the car. "Let's go to my house where I can give you the cash." He arrived at 6520 Northwest 29th Avenue, the

residence of the defendant, and his step-brother, Nathaniel Taylor, and another individual, Johnnie Mills, were present. He told the victim to come into the house because he didn't want to give him the thirty-four hundred dollars or thirty-six hundred dollars because there might be a robbery or something might happen outside and to please come into the house where it would be safer. Immediately upon entering the house the defendant brandished a knife and forced the victim into the southwest bedroom of the residence where by prearrangement Nathaniel and Johnnie Mills were waiting for him. At that time they tied up the victim and laid him down on the bed. The defendant went through the victim's pockets taking some money, all of the identification and his watch. He left the victim there with Nathaniel Taylor and Johnnie Gary Mills and he took

the victim's car and attempted to sell it. He was unsuccessful with the first three or four dealerships that he went to. Finally, in the early afternoon he was able to sell the car at Tally Embry Ford for twenty-six hundred dollars. He received the cashier's check for twenty-six hundred dollars. The cashier's check was made out to the mother of the victim, the title of the car having been in her name. The defendant took a taxi cab and attempted to cash that check at the Southeast First National Bank. The cashier told him that they could not cash the check because there was insufficient identification identifying him. The defendant took the taxi cab back to his house and went inside and told the others what the problem was that he was having. The defendant kept watch over the victim Tuesday night. It

was in the early morning hours of Wednesday, at approximately 1:55 a.m., that the defendant took the victim out of his house and down the street to a corner telephone booth where he forced the victim to call his brother and make a ransom demand for twenty-six hundred dollars, excuse me, twenty-seven hundred dollars.

The ransom money was to be delivered by Angelo Meli that sam Wednesday at approximately 3:00 p.m. by placing it in a brown paper bag behind a Dempsey Dumpster at Northwest 27th Avenue and 79th Street.

The morning, Wednesday morning, of September 29, the defendant again left the victim in the custody of Nathaniel Taylor and Johnnie Mills, returned to Tally Embry Ford, demanded from them to give him the car back or make good on the twenty-seven hundred dollars. Tally Embry Ford contacted Southeast First National Bank,

an officer, and told him that it was okay to cash the check. The defendant then went down to Southeast First National Bank and was able to obtain twenty-seven hundred dollars in small bills. The defendant then returned to the residence approximately at 1:00 p.m. He gave Nathaniel Taylor \$230 from the proceeds of the sale of the car. He gave Johnnie Mills \$200. At that time Nathaniel Taylor and Johnnie Mills left the room. The defendant walked back into the southwest bedroom where the victim was still tied and lying on the bed and at that time proceeded with what we can only describe as the cold-blooded execution of Frank Vincent Meli. He was stabbed some eleven times. The medical examiner, Dr. Ronald Wright, the deputy medical examiner for Dade County, I beleive, will tell the court that in his medical opinion the victim was

completely incapacitated at the time he was being stabbed to death; his hands were either tied behind his back or tied to the corners of the bedposts. There is absolutely no evidence whatsoever of a struggle being put up by Frank Vincent Meli. The defendant left the body in the bedroom. Death did not come quickly to Meli. The medical examiner said it would take several minutes to die even though there was one instantaneous stab wound which the State will submit was the last stab wound inflicted by the defendant upon the victim. The defendant then realized that it was close to 3:00, decided why not, why not attempt to cash in twice and go pick up the ransom money. The defendant went to the corner of 27th Avenue and 79th Street, and was present at the time that Angelo Meli drove up in the car and placed the brown paper bag behind the

Dempsey Dumpster. However, according to Washington's own words, he became "hinky", he suspected that there were police officers in the area, and he did not pick up the money. He returned to the residence and later on that evening, on Wednesday night, approximately 11:00 to 12:00 buried Frank Vincent Meli in the back yard in a grave about four foot deep; covered up the grave and went on about his business. On Thursday, September 30, the defendant contacted Bill Coleman and purchased from him a motorcycle for eleven hundred dollars. The remaining part of Thursday the defendant enjoyed driving the motorcycle around, showing it to his friends, and later on that day he went to the dog track and later that evening spent the proceeds at the Castaways Lounge and Hotel on Miami Beach. On Friday morning the police zeroed in on the particular area and at approximately

1:30 that afternoon, Detective Wolf and another detective discovered what they thought appeared to be a grave. At that the defendant came walking down the street with his hands above his head and his pockets inside out and surrendered himself, indicating he was the one that killed the white boy and pointed to the grave where the victim was subsequently found. The State will submit under the facts of that particular killing that there are at least five aggravating circumstances. The first murder was committed in the commission of a felony. In this case we have two felonies, robbery and the kidnapping. Second, as well as all three homicides, they were done for pecuniary gains, the procurement of the car and the subsequent selling of it. Third, the defendant as he stands before the court on the Meli murder has now previously been convicted of two other

capital felonies; that of Katrina Birk and that of the Reverend Daniel Pridgen. Four, again the murder was committed to dispose of the only eyewitness who could not only identify him but could at least take the police to the house where he had been kept captive, and finally, probably the one out of the three that is probably the most cruel, heinous and atrocious murder, the cold-blooded execution of a young boy who was tied and totally incapacitated at the time of this murder. I submit that the court, after the court has heard thirteen days in the life of David Leroy Washington and looked at the aggravating circumstances, the court will have but one choice, one legal choice, but to impose the death penalty. The State at this time calls Detective Charles Major.

THE COURT: Would the defendant like to make an opening statement.

MR. TUNKEY: I have filed with the court a memorandum regarding sentencing. The State did not. I will rely upon that memorandum at this time and will waive opening statement, reserving the closing argument.

THE COURT: I believe at the time I set this, I think it was last Thursday or Friday, I requested that both counsel prior to the time of the determination of the sentencing procedure, or at least this part of the proceeding, if they wished, to submit a memorandum in aggravation or mitigation, and I am glad that you were able to do it.

MR. ADORNO: We have that memo, Judge. I will present it at the end of the hearing.

MR. TUNKEY: I will ask that the rule be invoked, Your Honor.

THE COURT: Who are the witnesses who

will testify?

MR. ADORNO: They are on different cases and there is no relationship. I don't think there is any necessity for the rule to be invoked.

THE COURT: What is the necessity for it if they are on different matters?

MR. TUNKEY: Well, Your Honor, I am not aware of the different matters.

THE COURT: We will invoke it. The witnesses will please come forward and we will have them sworn.

[Thereupon, the witnesses were duly sworn.]

THE COURT: Have a seat outside the courtroom except for the first witness, please. Do not discuss the case any more until after you have had a chance to give all of your testimony. Go ahead, counsel.

MR. ADORNO: Detective Major.
Thereupon:

CHARLES MAJOR

was called as a witness on behalf of the plaintiff, and having been duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. ADORNO:

Q Would you state your name and official position?

A Charles Major, Police Officer, Dade County Public Safety Department, assigned to the Homicide Section.

Q And how long have you been assigned to the Homicide Section of the Dade County Public Safety Department?

A Since April of 1974.

Q And how long have you been a police officer with the Public Safety Department?

A Since 1970.

Q Did you have occasion to become involved in the homicide of the Reverend

Daniel Pridgen which occurred on September 20, 1976?

A Yes, I did.

Q And what was your responsibility with respect to that particular homicide?

A I was assigned as the lead investigator on that date.

Q When did you first become involved in that investigation?

A On Tuesday, 21 September, at approximately 6:00 p.m.

Q Sir, did you have occasion to go to any particular location with respect to that investigation?

A Yes, sir. I was directed to go to 2773 Northwest 57th Street, Apartment No. 8, the residence of the victim.

Q Would you describe those premises for the court?

A The premises--there are like four separate structures. Each structure

consists of two apartments, and apartment No. 8 is situated on the southwest corner of the lot.

Q Did you have occasion to go into that apartment?

A Ues, sir, I did.

Q Would you describe the surroundings, how many rooms the apartment had?

A There was one exterior door which is located in the east side of the apartment. It is the only exterior door to the apartment. The inside of the apartment consists primarily of one large room which is used as both a living room and a bedroom with the two areas being divided by a couch.

Q Upon entering the apartment did you find any signs that would indicate there was a breaking and entering into that particular apartment?

A No, sir. The door was found unlocked. There was no evidence of forced entry. There was complete ransacking throughout the apartment, drawers pulled out, articles scattered about the floor.

Q Let me show you what has been marked as State's Exhibit No.1 for Identification and ask you if you recognize that?

A Yes, sir, I do.

Q Does that truly and accurately depict what is portrayed therein?

A Yes, sir. This is a view from the entrance door to the apartment.

Q Is that the way you saw it when you first entered the apartment on September 21, 1976?

A Yes, sir, it is.

MR. ADORNO: The State would move No. 1-A for Identification into Evidence at this time, Your Honor.

THE COURT: Mr. Tunkey?

MR. ADORNO: There are several that I will introduce.

MR. TUNKEY: No objection.

THE COURT: Why don't you check through those and see if you have any objection or if we can let them in.

MR. TUNKEY: As to some of these, I believe they are duplicitous. They are color photographs. I believe they are being introduced solely to sway the court, but they don't have any relevance or materiality. The defendant has pled guilty to the murders.

THE COURT: We will go through each one then.

[Thereupon, State's Exhibit No. 1-A marked for Identification was marked as State's Exhibit 1 and received into

Evidence.]

MR. ADORNO: If I may publish the exhibit to the court, please.

THE COURT: Just pass them up here.

Q [By Mr. Adorno] Did there come a time that you came in contact with an individual who later became to you as Reverend Daniel Pridgen?

A Yes, sir.

Q Where was he the first time you saw him?

A He was located on the bed in his apartment.

Q Did he have any clothes on at that particular time?

A No, sir. He was nude.

Q Let me show you what has been marked as State's Exhibit 1-E for Identification and I will ask you to tell the court if you can identify that particular photograph.

A Yes, sir.

Q Does it truly and accurately depict the scene as you saw it on September 21, 1976?

A Yes, sir.

MR. ADORNO: The State would move 1-E for Identification in Evidence, Your Honor.

MR. TUNKEY: I objection on the grounds previously stated.

THE COURT: The objection is overruled. It will be admitted.

[Thereupon, the document referred to was marked as State's Exhibit No. 2 and received into Evidence.]

Q [By Mr. Adorno] Detective, State's Exhibit No.2 depicts the position of the Reverend Daniel Pridgen when you first saw him on September 21, 1976.

A Yes, sir.

A Yes, sir.

Q Did you have occasion to examine the Reverend Daniel Pridgen?

A Yes, sir, I did.

Q Were you able to determine what you believed to be the cause of death?

A Yes, sir.

Q And what was that?

A Multiple stab wounds.

Q Let me show you a series of three photographs marked as State's Exhibits 1-D, 1-C, and 1-B, and ask you whether you recognize those three particular exhibits?

A Yes, sir, I do.

Q And do they truly and accurately depict the scene as you saw it on September 21, 1976?

A Yes, sir.

MR. ADORNO: The State would move all three of those into Evidence, Your

Honor.

MR. TUNKEY: Objection, Your Honor. They are irrelevant, immaterial. They are duplicitous and I object on the grounds previously stated.

THE COURT: Overruled.

[Thereupon, the photographs referred to were marked as State's Exhibits Nos. 3A, 3B, and 3C respectively, and received in Evidence.]

Q [By Mr. Adorno] Detective, with the use of the photographs would you show the court where the various stab wounds were on the defendant, I mean, on the victim, when you saw him that particular -night. You may use the photographs and please address the court.

A There were a series of stab wounds about the body totalling eleven.

Stab wounds were located in the area of the upper abdomen. There were three additional stab wounds across the upper right area of the chest and around to the right side.

Q Do you have one of those photographs that depicts those particularly wounds to show to the court, please?

A Yes.

Q Will you show that to the court. You may continue, Detective.

A There was one single stab wound located on the left anterior line of the chest. There were three stab wounds on the right upper arm which is also in this picture, and then there were three additional stab wounds on the right side of the back.

Q Would you show the court those photographs that depict those particular wounds. Detective, let me show you what

has been marked as State's Exhibit 1-F for Identification. Do you recognize that particular exhibit?

A Yes, sir.

Q Does it truly and accurately depict the scene as you saw it on the 21st?

A Yes, sir, it does.

MR. ADORNO: The State would move into Evidence that exhibit at this time.

MR. TUNKEY: No objection.

THE COURT: It will be admitted.

[Thereupon, the photographs referred to were marked as State's Exhibit No. 4 and received in Evidence.]

Q [Mr. Adorno] Would you tell the court what State's Exhibit No. 4 depicts?

A It is a photograph of the bathroom area depicting a toilet in the bathroom of the victim's apartment. Inside

the toilet is located the cleaning brush with a handle being submerged, and inside of the toilet, submerged in the water, is a soaked pillowcase with bloodstains.

Q Let me show you now a series of three other photographs, State's Exhibits No. 1-H for Identification, I-G for Identification, 1-I for Identification, and may I ask you if you can tell the court whether you recognize those photographs?

A Yes, I do.

Q Do they truly and accurately depict the scene as you saw it on September 21, 1976?

A Yes, sir.

MR. ADORNO: The State would move those three exhibits into Evidence, Your Honor.

MR. TUNKEY: There has been no showing in connection with this case. I object.

THE COURT: Overruled. They will be admitted, A, B, and C, please. Put them in the next group.

[Thereupon, the photographs referred to were marked State's Exhibits Nos. 5A, 5B, and 5C, respectively, and received in Evidence.]

Q [By Mr. Adorno] Detective, would you tell the court what those three particular exhibits portray?

A Those are three photographs of the walls inside the victim's apartment depicting the writing that was located on those walls.

Q Sir, what this writing say basically?

MR. TUNKEY: Your Honor, I object. The pictures speak for themselves.

THE COURT: Sustained.

MR. ADORNO: I will hand them to the clerk so that the court can look at the particular photographs.

THE COURT: I see them.

Q [By Mr. Adorno] Detective, after looking or seeing the particular writing on the wall did you determine what the one possible motive might be in the killing of the Reverend Daniel Pridgen?

MR. TUNKEY: I object, Your Honor. This is speculation.

THE COURT: Sustained, sustained.

Q [By Mr. Adorno] Any fingerprints of value that you lifted from the scene at the time?

A Just a couple that were identified with the victim.

MR. TUNKEY: Objection, Judge.

Q [By Mr. Adorno] Were there any fingerprints found?

A Yes, sir.

Q And were any identified with the persons who subsequently were arrested?

MR. TUNKEY: Objection, Your Honor. He is not qualified.

THE COURT: Sustained.

Q [By Mr. Adorno] Did there come a time when you received information as to who committed the homicide of the Reverend Daniel Pridgen?

A Yes, sir.

Q When was that?

A On the 2nd of November, 1976.

Q Did there come a time when you first came into contact, when you first met David Leroy Washington?

A Yes, sir.

Q Do you see that individual in the courtroom?

A Yes, sir.

Q Would you point him out, please?

A Sitting to the right of Mr.

Tunkey.

Q When did you first come into contact with the defendant?

A On Firday the 5th of November, '76.

Q Where did you come into contact with the defendant?

A At the Dade County Jail.

Q Approximately what time did this initial meeting take place?

A Approximately 10:15 a.m.

Q Were you by yourself at that time?

A No, sir. Detective David Simmons was with me.

Q Was he also associated with the Homicide Section of the Dade County Public Safety Department?

A Yes, sir, he is.

Q Did you have an occasion to have a conversation with the defendant regarding the killing of the Reverend Pridgen?

A Yes, sir.

Q What time did that conversation take place, approximately?

A At approximately 3:10 p.m.

Q Where did that conversation take place?

A At the Homicide office.

Q Prior to you discussing the Pridgen homicide, were you present for the discussion of any other homicides that the defendant might have been involved in?

A Yes, sir.

Q In what homicide was that?

A The homicide of Katrina Birk.

Q Who is the lead investigator in

that particular homicide?

A Detective Simmons.

Q Prior to you or Detective Simmons having any type of conversation with the defendant, did you have occasion to read him the Constitutional Rights?

A Yes, sir.

Q Was that a written waiver of rights?

A Yes, sir.

Q Do you have your written waiver with you?

A Yes, I do.

Q Would you please pull it out of your case file and hand it to the clerk so that she may mark it for identification.

THE COURT: Any objection to this, Mr. Tunkey?

MR. TUNKEY: No, Your Honor. I might point out to the court that these exhibits have already been received by

the court at the time of the plea, and that includes the written and signed statement of the defendant.

THE COURT: I think for the purposes of this hearing counsel is attempting to introduce statements that were taken at that time.

MR. TUNKEY: I have no objection to incorporating the entire proceedings of last Wednesday into this record and the court taking that into consideration in passing sentence.

THE COURT: I had anticipated that the confessions are here and that they would be made a part at this time. If you want to go ahead we will put them in individual numbers so that you can keep your case order in some sequence. Just mark it with the Constitutional Rights form that was taken at that time.

Q [By Mr. Adorno] Detective,

at 3:10 p.m. on November 5, 1976, did you have occasion to have a conversation with the defendant with respect to the Pridgen homicide?

A Yes, I did.

Q And was this in an oral or written conversation?

A Oral.

Q How long did that oral conversation take place?

A Approximately an hour.

Q Did you take any notes during the taking of this particular statement?

A Yes, I did.

Q Did you incorporate that in your police report?

A Yes, sir.

Q With the use of your police reports and the written statements which were subsequently taken, please tell the court as best you can remember what you

might have said to the defendant and what the defendant might have said to you; try to limit yourself as best you can to the murder of the Reverend Daniel Pridgen.

MR. TUNKEY: Your Honor, the statement is in evidence. It certainly is the best evidence as to the exact conversation.

THE COURT: I think that counsel is able to bring in any other evidence that may not have been incorporated in the statement; of course, subject to your cross.

MR. ADORNO: I am only dealing with the oral statement, not the written.

THE COURT: Use your notes only to refresh your recollection if you need to.

Q [By Mr. Adorno] You may answer the question.

A Our conversation began with just how David Washington came to involve himself with the murder of Reverend

Pridgen. I wanted to find out from Washington in his own words just how long it had been planned, if it had been planned. So the conversation began in that area. David Washington told me that he and Johnnie Mills, having been friends for quite some time, had been hanging around together over the weekend prior to the homicide. Mills approached David Washington and told him about the Reverend Pridgen and that the reverend was a homosexual and that he also worked up at the laudromat and would probably have a good sum of money from the laudromat. So David Washington decided that he was going to get with Mills and make up a plan to go over to Reverend Pridgen's apartment, and using his homosexual tendencies, make up a plan to rob him.

However, David Washington also told me that he had already made it up in

his mind that he was going to kill Reverend Pridgen regardless of whether they got any money or not because he was a homosexual and he did not like the idea of a homosexual being in the church, and in David Washington's words "hiding behind the cloth."

So, David Washington, along with Johnnie Mills decided that that Monday evening, around 10:30, Mills would make an appointment to go by Reverend Pridgen's apartment to engage in these sexual activities. This went according to plan. Washington, however, went with Mills over to Pridgen's apartment. Washington had with him a hunting knife. He called it a Jim Bowie knife, which he had borrowed from a neighbor boy the previous Sunday. He had told the neighbor boy that he just wanted to mess around with it. But he, in fact, had borrowed the knife with the

intent and the plan to use that to kill Reverend Pridgen.

At about 10:30 p.m., Monday evening, Johnnie Mills and David Washington went around to Pridgen's apartment. They knocked on the door. They were admitted by the reverend. Washington said that Reverend Pridgen appeared to be somewhat surprised to see that there were two people when he had only expected Johnnie Mills and David Washington went in to the victim's apartment and sat down and they engaged in some idle conversation for perhaps five or ten minutes.

Then Washington excused himself and said that he had to leave. This was also according to the plan. Washington then left the apartment, walked to the corner of that structure that the apartment is located in, and waited for a couple of minutes for Mills to begin to

engage in this homosexual activity with Reverend Pridgen. The reverend had taken his clothes off and had gotten into the bed and the lights were turned off.

So Washington moved up to the front door of the apartment so that he could be in closer range to hear the coughs that Johnnie Mills was supposed to signal him when he had Pridgen, Reverend Pridgen in bed.

When Washington heard Johnnie Mills cough two times, loudly, he had placed some gloves on his hands which he had also brought with him, and then he immediately entered the apartment through the front door which was unlocked, went directly over to the bed and began stabbing Reverend Pridgen.

David Washington said that he thought that he had cut Mills at one point but later found out that he had not, the

reason being there was dark inside the apartment except for a small lamp that was on.

After he stabbed the Reverend Pridgen, immediately, David Washington then got up and turned the light on where they saw better. He kept telling Johnnie Mills to be sure and hold the pillow Reverend Pridgen's head face so that the reverend would not cry out or make any noise to alert any of the neighbors.

After turning the lights on, David Washington observed that the Reverend Pridgen was still alive and that he was still wiggling on the bed. He again told Johnnie Mills to be sure and hold the pillow down over Reverend Pridgen's face. He watched for perhaps one, perhaps two minutes until Reverend Pridgen stopped wiggling. He was satisfied that the reverend was dead. He and Johnnie

Mills then proceeded to begin to ransack the apartment in search for monies.

After Johnnie Mills had gotten up off the bed, David Washington observed that there was some blood on the pillowcase that Mills had been holding over the reverend's face. He felt that this blood appeared to be a print from Mills, a handprint. He wanted to be sure that there would be no evidence to trace so he took the pillowcase into the bathroom where he used a cleaning brush handle to submerge it in the water so as to distort the blood print.

Q Was that the condition you found the pillowcase when you arrived at the scene on September 21, 1976?

A Yes, sir.

Q Continue.

A David Washington then returned to the living room and the bedroom area of

this apartment where had and Johnnie Mills continued searching for some money. He stated that Johnnie Mills was making a lot of noise and kept having to tell him to to hold it down and keep quiet and not make so much noise, and then took a pink spread and covered one of the windows with it because he was afraid with the noise that Mills had been making that a neighbor might perhaps look over and he didn't want anybody to see them inside.

Then he continued looking for money. They couldn't find any of the money very easily. Finally, in the upper right-hand drawer of the desk there that was over by the couch, he found a wallet that belonged to the reverend. Washington had taken his gloves off for a moment and in going through the wallet, he had touched some of the identification. He didn't

want to take a chance on the police being able to lift fingerprints from this identification, and these paper items that he had touched while he had the gloves off, so he took those with him when he subsequently left the apartment.

He ended up tearing them up into small pieces and scattering them about the streets, four or six blocks from the scene, and he said that he believed that he may have burned some of the paper items also.

Then he put his gloves back on and continued to search for some money. In this same drawer that he found the wallet in, he found a couple of rings. He said that one of the rings appeared to be similar to a Masonic ring. He took two of the rings from the drawer. He also found a watch which he took and also in the same drawer, he found a .22 caliber

chrome-finished revolver with a two to three inch barrel that had some black tape wrapped around the handle. This he also took from the Reverend Pridgen's apartment.

After finding these articles and going back over areas that Johnnie Mills had touched, and also telling Mills to do the same in wiping them so that there would not be any fingerprints left, then Washington decided he would write some phrases on the walls because he wanted the community and people around the neighborhood to know that Reverend Pridgen was a homosexual.

He also felt that by writing this on the wall that when the police began to investigate the murder that they would be thrown off of the trail leading to David Washington and to Johnnie Mills because we would think that there was a

homosexual involvement that killed Reverend Pridgen.

I asked David Washington if he is a homosexual and he stated that he is not. I asked him if Johnnie Mills was a homosexual. He said that Johnnie Mills is not really a homosexual, he doesn't feel.

However, Johnnie Mills, being a drug addict, associates a lot with homosexuals in order to obtain money to support his habit.

I asked David Washington how long they stayed at Reverend Pridgen's apartment. He said that it was around 12:30 to 1:30 a.m. that Tuesday morning before they left the apartment, the reason being that they were determined to try to find some money inside the apartment and they continued searching and ransacking the apartment and they also wanted to be sure that it was late enough

that nobody of the neighbors could possibly see them leaving.

At about 12:30, 1:30 a.m., when they did leave the apartment, they decided to take Reverend Pridgen's car, mainly because they felt that possible there would be some money in the trunk of the car if they had not found a large amount in the apartment.

They were able to find something in the neighborhood of \$80.

So he took Reverend Pridgen's keys, told Johnnie Mills to wait while he went out to the car, and opened the passenger door for Johnnie Mills, and then signaled for Mills to come out and get into the car. Once Mills got into the car he instructed Mills to be sure not to touch any areas or surfaces inside the car. He then got into the car and he drove it from Reverend Pridgen's apartment directly

to his home where he took the gun inside his house and then went back to the car, started to go into the trunk and discovered that the trunk lock had been punched out, and he didn't want to take the time that would have been required to open the trunk by force.

So then he told Mills to come with him and "Let's go for a ride." He then left his house and drove up to 77th Street and 27th Avenue Northwest, which is approximately a half-block south of Lazier's Lounge, which was their destination. There is a car lot located on the southeast corner of that intersection which is where David Washington parked Reverend Pridgen's car.

I asked David why he chose this particular location to abandon the car. He said that the reason for leaving the car on the side of the car lot was that he

felt that the people who run the car lot would see the vehicle there and after a couple days would think perhaps that it had been abandoned, and they might even pull the car onto the lot, perhaps paint it, perhaps try to sell it.

David Washington said that each day after the car had been abandoned, he continued to go by the car lot to see if the car would be pulled into the lot, and if it were to be pulled in, he would anonymously call the police and try to throw some suspicion on the people at the car lot for having the victim's car.

Q Did you ever recover the reverend's car?

A Yes, sir.

Q Where was it recovered?

A On the south side of the car lot at 77th Street and 27th Avenue,

Northwest.

Q What happened then?

A After abandoning the Reverend Pridgen's car, David Washington and Johnnie Mills walked over to Lazier's Lounge. David still had the hunting knife with him. However, he took it out and placed it alongside the building of the lounge, he didn't want to take it inside.

Then he and Johnnie Mills went into the lounge. I asked David Washington if he had had anything to drink while he was in the lounge. He said that he doesn't drink alcoholic beverages.

I also asked him if he uses narcotic drugs and he said he does not.

I asked him if he was under the influence of any alcohol or narcotic drugs at the time of the murder. He said he was not.

He said they stayed at Lazier's

Lounge for perhaps five minutes. Then they left and walked back to his home at approximately 65th Street and 29th Avenue. He said that on the way from Lazier's Lounge to his home, he took the key ring which had several keys on it, including the keys to the reverend's car, took them off individually and threw them alongside the road in people's yards, in vacant lots, between Lazier's Lounge and his house. He also picked the knife back up from alongside the building and took it with him down to approximately 73rd Street and 27th Avenue while walking home where he threw it into a field.

Q Anything else that you can remember about the oral statement which began at 3:10 p.m. on November 5, 1976?

A I asked him what he did after he got back home from Lazier's Lounge. He said he just sat up for little while

thinking about what had happened. Then he retired for the evening.

Q What time did the oral statement conclude?

A Approximately 4:10 p.m.

Q What, if anything, did you do after that?

A I took a formal written statement from David Washington covering the same area the oral statement had. While I was taking the oral statement from David Washington, he was given a sandwich and a drink and ate while we talked.

MR. ADORNO: Judge, I believe we have a stipulation that the exhibit--

THE COURT: Yes, sir. It has already been received, his statement. I do not know what the number is.

[Thereupon, the document referred to was marked as State's Exhibit No. 6 and

received in Evidence.]

Q [By Mr. Adorno] Detective Major, was the defendant given an opportunity to read the statement, State's Exhibit No. 6, a copy of the original?

A Yes.

MR. ADORNO: Excuse me. Would you make that a Composite No. 6 with the Rights Form in the statement. Thank you.

[Thereupon, the document referred to was re-marked as State's Composite Exhibit No. 6 and received in Evidence.]

Q [By Mr. Adorno] Did the defendant make any corrections that he felt were necessary to accurately reflect what had happened on that night?

A Yes, sir, he did.

Q Prior to beginning the oral

statement at 3:10 p.m. on November 5, when you initially contacted the defendant with the accusations involved in the Birk and Pridgen homicide, did he admit or deny it?

A He denied it.

Q Did there come a time when he changed his mind?

A Yes, sir.

Q And would you tell the court the circumstances about the defendant changing his mind as to his involvement in the Birk and Pridgen homicide?

First of all, when did that conversation--

MR. TUNKEY: Judge, I will object to this. This is inappropriate. The State is knowingly and intentionally commenting upon the defendant's rights under the Fifth and Fourteenth Amendments to remain

silent. We would move to strike this.

THE COURT: Overruled.

Q [By Mr. Adorno] When did that conversation take place?

A The initial conversation took place between 10:45 and approximately 11:45 a.m.

Q Did that also take place in the Homicide Office?

A Yes, sir.

Q Was Detective Simmons also present?

A Yes, Sir.

Q Would you tell the court the circumstances in the conversation that took place at that time?

A After advising David Washington of his rights per the Miranda decision. I advised David that he was suspected of both the Revered Pridgen's murder and Katrina Birk's murder; introduced myself

as the lead investigator on the Pridgen homicide and Detective Simmons introduced himself as the lead investigator on the Birk homicide. We informed David that the investigation was still continuing and that evidence would be worked that would would prove that he in fact did kill Reverend Pridgen and Katrina Birk, and there was no reason for him to attempt to lie to us.

We informed that we spoke to Johnnie Mills and that we had learned from Johnnie Mills of David's involvement; that Mills was telling us that David had told him about the murders.

Q What reaction, if any, did you observe on the defendant, either by speech or by sight?

MR. TUNKEY: Objection. It is immaterial and irrelevant.

THE COURT: Overruled.

A I believe he grinned a little bit and said that Johnnie Mills was lying to and that Johnnie Mills was there also in that he took part in the Bridgen homicide.

Again, I asked David Washington if he was willing to come forth with the truth about this, these two murders, and he said that he would tell us about how the murders took place; why they took place.

He did ask one thing of us, that he be permitted to speak with his wife before the news was released and we advised that although we couldn't make any promises to him, we would do our utmost to have her brought down to the Homicide Office so that he could speak with her before the press releases were made.

Q Were you able to comply with that request before the defendant was formally booked into the Dade County Jail?

A Yes, sir.

Q Did he get an opportunity to speak to his wife on November 5, 1976?

A Yes, sir.

Q What time was he booked into the Dade County Jail?

A We took him back over to the jail at 10:00 p.m.

Q Did you have occasion to see him on November 6, 1976?

A Yes, sir.

Q And at approximately what time and where did that meeting take place?

A It was in the early evening. I believe it was around 8:00 p.m.

Q Sir, what was your purpose for being in the Dade County Jail to see the defendant?

A Myself and Detective Simmons went over to the Dade County Jail to see David Washington, and asked him if he'd be willing to accompany us on location to point out areas that he had disposed of evidence as he related to us in both oral and written statements, that being the murder weapon in the Pridgen homicide, and the other evidence in the Katrina Birk

murder.

Q Did he comply and take you and Detective Simmons on location at a subsequent time?

A Yes, he did.

Q During that meeting of November 6, 1976, did you have a conversation to ask the defendant anything concerning the Frank Vincent Meli homicide?

A Yes, I did. During our conversations, of course, we would ask questions of David Washington in regard to each of these three cases, and in trying to understand David Washington a little better, I asked him why he committed these murders.

He said that one of the reasons was that he wanted to get money for his children, for his wife. So I asked him how he expected his children to eat the motorcycle that he purchased with the

monies that he got from the Frank Meli murder.

He again grinned and told me that he knew where I was coming from, and he had never had anything and he felt that this was just a little bit of something for himself also, and that he had given some of the money to his wife and children, and that the motorcycle was just something for him and that he had never had anything and he would later use the motorcycle for transportation if he could get a job.

MR. ADORNO: Thank you. No further questions.

THE COURT: Any cross, Mr. Tunkey?

MR. TUNKEY: May I have a moment, Judge?

THE COURT: Yes, sir, of course.

CROSS EXAMINATION

BY MR. TUNKEY:

Q Detective Major, how much time went by between your initial contact with Mr. Washington and the time that he gave you the statements concerning the Pridgen and Birk homicides.

A Are you referring to the oral statements, sir, or the written statements?

Q Oral.

A An hour before we start making the first statement.

Q Did he see his within an hour or speak with his wife during that hour?

A No, sir.

Q How much time did he spend with you on November 6 when you went out, presumably, in a detective car, you and David Washington and Detective Simmons?

A Perhaps an hour.

Q Who was in the car with you besides Simmons and David Washington?

A We were the only three in our vehicle and we had two unmarked backup vehicles with one man in each one of those.

Q Did he ever try to escape?

A No, sir. He was handcuffed.

Q Well, in spite of the fact he was handcuffed, did he try to escape?

A No, sir.

Q Was he cooperative?

A Yes, sir.

Q Did you ever ask David Washington to take a polygraph test?

A No, sir.

Q Did he ever offer to?

A I don't recall him offering to take one, no.

Q As I understand it, he freely told you of his participation in three separate homicides?

A Yes.

Q When he gave you these statements, he never acted in any fashion such as to indicate to you that he was bragging of his participation in these things, did he?

A No, sir.

Q Did he seem remorseful?

A I couldn't answer that with a yes or no.

Q Why?

A Because each case is different.

Q All right. Without regard to the Pridgen homicide, did he seem remorseful as to the other two, the Birk and the Meli incidents?

A Somewhat.

Q Do you feel that David Washington is intelligent?

A Yes, sir, I do.

Q Do you feel that he has abilities that could be channeled into useful

MR. GERSTEIN: Object to this, Your Honor.

THE COURT: Overruled. You may answer, sir.

A I don't know if I can answer that.

Q [By Mr. Tunkey: You just told us he was intelligent.

A Yes, sir.

Q My question to you is, do you feel he has the ability to channel his life or what remains of it into useful activities?

MR. GERSTEIN: The basis of my objection, if Your Honor please--

THE COURT: Lack of qualification. I understand. He can answer that.

MR. GERSTEIN: He said he isn't able to.

THE COURT: Yes, that is his answer.

Q [By Mr. Tunkey] Is that your answer?

A Yes, Sir.

MR. TUNKEY: I have no further questions.

REDIRECT EXAMINATION

BY MR. ADORNO:

Q Was he remorseful with respect to the Pridgen homicide?

A Was he?

Q Yes.

A No, sir.

Q What was his reaction as to the Pridgen homicide?

A His reaction was he did what he set out to do. He took Reverend Pridgen's life because he was a homosexual and he didn't belong in the church and didn't belong alive.

Q When you first confronted the defendant with evidence in the Birk and

and the Pridgen case, he initially denied any involvement.

MR. TUNKEY: Objection, again, Your Honor.

THE COURT: Overruled.

Q [By Mr. Adorno] And he only told you about those two homicides after you confronted him with the fact that Johnnie Mills had told you and Detective Simmons that defendant was involved.

A Yes, sir.

MR. ADORNO: Thank you. Nothing else.

MR. TUNKEY: No questions.

MR. ADORNO: Judge, may the detective stay in the courtroom now that he has testified?

MR. TUNKEY: I don't object.

MR. ADORNO: Would you ask Dr. Fernandez to step in, please.

Judge, the doctor needs to be

sworn in. He was not here when the other witnesses were sworn.

the court; Any objection as to the stipulation relative to the doctor's qualifications?

MR. TUNKEY: I will stipulate that the doctor is a forensix pathologist.

THE COURT: I thank he is a member of the staff of the County Medical Examiner.

Thereupon:

ELIDIO C. FERNANDEZ

was called as a witness on behalf of the plaintiff and, having been duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. ADORNO:

Q State your name and what your official duties are.

A Elidio C. Fernandez. I am an associate medical examiner with the Dade

County Medical Examiner's Office.

Q Dr. Fernandez, did you have an occasion to perform an autopsy on the Reverend Daniel Pridgen on September 22, 1976?

A Yes, I did.

THE COURT: Would counsel stipulate that I can have a copy of the protocol for the purposes of following his testimony?

MR. ADORNO: Yes, sir.

THE COURT: Any objection?

MR. TUNKEY: No, sir.

THE COURT: Because it does aid the court if I have a copy. I have no objection if you want to go ahead and make a copy, mark it as an exhibit.

MR. TUNKEY: I agree.

THE COURT: Just give it the next number.

[Thereupon, the exhibit

referred to was marked and received as No. 7.]

Q [By Mr. Adorno] Doctor, did you have an occasion to perform an autopsy on the Reverend Pridgen?

A Yes, sir, I did.

Q Would you tell the court what your external examination revealed?

A Yes. It revealed the presence of multiple stab and incised wounds.

Q Sir, would you describe the location of those wounds for the court; it might be easier if you might stand up and point them out on your body. The judge has already had the opportunity to look at the photographs.

A Well, most of the stab wounds and the incised wounds were in the torso. There was one on the right upper anterior chest at about this location.

Q Indicating, for the record,

right upper chest?

A Right.

There was one on each left and right lateral aspect of the chest at about the mid-axillary line. There is an imaginary line running here. There were three in the right upper abdomen. There was one on the right lower back and there were three in the right arm.

In addition to these there were other smaller incised superficial wounds in the front lateral aspect in the back of the torso.

Q Did you conduct an internal examination the deceased?

A Yes, I did.

Q And were you able to determine whether any of the stab wounds punctured any organs?

A Yes, I did, and they had punctured several organs?

Q Which particular wounds were they and which organs did they puncture?

A I would have to refer to--

THE COURT: Go ahead, sir, use this as an exhibit to refresh your recollection.

A The one wound on the upper anterior chest which was about four inches below the top of the shoulder, penetrated the right chest cavity and lacerated the right upper lobe of the lung.

The wound on the right lateral chest wall at the mid-axillary line also penetrated the right chest cavity and lacerated the lower lobe of the right lung.

The wounds in the right upper abdomen, number three that I described, together lacerated the liver and several of the small intestinal lobes and large bowel lobes as well as the aorta.

The aortic laceration was a

rather small nick in the wall of the aorta. The wound located in the right lower back also penetrated the cavity and injured the diaphragm and the liver.

The wound located in the left lateral chest at the mid-axillary line also penetrated the left chest cavity and lacerated the left lung.

Those on the right arm went through the soft tissues of the area.

Those are essentially the penetrating ones in the organs that were injured.

Q Of all the wounds, Doctor, that you found how many do you consider to or would have been fatal?

A The wounds on the torso that penetrated the cavities would have been all potentially fatal and the number of those, I think, is seven.

Q Doctor, would any of those

wounds, any of those seven wounds, have caused instantaneous death?

A Not instantaneous death, no.

Q Approximately how long within reasonable medical certainty would it have taken the victim to die taking into account these wounds that you found both by the external and internal examination of the Reverend Pridgen?

MR. TUNKEY: I will object unless the question is given as to medical--

THE COURT: Okay, go ahead.

A I would roughly approximate it that it would have taken probably minutes for him to die.

Q [By Mr. Adorno] What was the cause of death?

A The cause of death was bleeding, internal bleeding. He had a significant amount of blood in the abdominal cavity as well as both chest cavities.

Q In other words, his lungs got full of blood.

A Right. The cavities where the lungs are contained, and I also assume that he must have bled some externally.

Q How much force would have been necessary, Doctor, in order to inflict the wounds that you found on the Reverend Daniel Pridgen?

A I would say insignificant force, enough to penetrate the chest in the abdominal walls.

MR. ADORNO: Thank you. Nothing further.

MR. TUNKEY: No questions.

[Witness excused.]

MR. ADORNO: Your Honor, may I be excused for two minutes. I have to bring down Mrs. Pitzer. She is waiting in my office.

THE COURT: Go ahead.

[Thereupon, a recess was taken after which the following proceedings were had:]

THE COURT: All right, counsel, take your witness, please.

Thereupon:

RUTH MARIE PITZER

was called as a witness on behalf of the plaintiff and, having been duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. ADORNO:

Q Mrs. Pitzer, will you state your name?

A Ruth Marie Pitzer.

Q Mrs. Pitzer, how old are you?

A I am 69.

Q Where do you live?

A Indiana.

Q Drawing your attention to

September 21, 1976, did you have an occasion to come down here to visit anybody in Miami?

A Yes, I did.

Q Who were you coming to visit?

A We were coming to see our sick brother and we stayed with my sister-in-law.

Q What is her name?

A Kay Birk.

Q Did you come down by yourself?

A No. My two sisters came along.

Q And what are their names?

A Mrs. Julia Sullivan and Mrs. Georgia Griffith.

Q Did you stay with your sister-in-law, Kay Birk, on Tuesday, September 21?

A Yes, we did.

Q How about Wednesday?

A Yes, we did.

Q How about Thursday?

A Yes, we did.

Q Were you at your sister-in-law's house the night of September 23, Thursday night?

A Yes, I was.

Q And were your two sisters and Kay also present?

A That's right.

Q What were you all doing that evening?

A We were watching the television, the debates between Jimmy Carter and the president.

Q Did there come a time when something unusual happened that evening?

A Yes.

Q Would you tell the court what was the first thing that you observed?

A The screen door was pulled open and it made a loud noise, and this fellow

came in waving a gun. I screamed. No one else did. But he said if we keep still and do like he said we wouldn't be hurt.

Q Did you notice whether the individual who came in through the door had any type of disguise?

A I beg your pardon?

Q Did the individual have any type of disguise?

A Yes

Q What was that?

A He had strips of material tied around his face three or four different places.

Q Once he got into the house and he told you to do what he told you, and that he wouldn't hurt you, what happened after that?

A He told them all to lay down on the floor.

Q Did your sister, Mrs. Griffith, lay down on the floor?

A Yes.

Q How about Mrs. Sullivan?

A Yes.

Q Did you lay down on the floor?

A No. My sister-in-law told him that I had Parkinson's disease and I couldn't get down on the floor.

Q And where did he leave you?

A He said I could sit in the chair.

Q Did your sister, Kay Birk, sister-in-law, Kay Birk, was she also told to lie down on the floor?

A Yes.

Q Did there come a time when your two sisters and your sister-in-law were tied, their hands were tied?

A Yes.

Q Were you able to tell how

Mrs. Griffith's hands were tied?

A They were tied behind her back.

Q How about Mrs. Sullivan?

A He tied hers in front.

Q Did there come a time when you observed your sister-in-law, Kay, take the individual who broke into the house into the kitchen?

A Yes.

Q What were you able to see?

A She took a can that contained money and put it on the table and told him he could have it.

Q Then what happened?

A Well, he asked about the purses but I think he was going to look through those later, and he came back in the room and that's when he tied Kay.

Q Then what happened after he tied Kay?

A Well, I heard him shoot.

Q How many gunshots did you hear?

A I heard him shoot three times.

Q Did you see him shoot Kay Birk?

A No.

Q Did you seen him shoot Georgia Griffith?

A No.

Q Did there come a time after you heard the gunfire that you saw a knife?

A Yes.

Q What were the circumstances when you first saw the knife?

A He was standing between me and Julia, and he took this knife and held it up and wiped it off.

Q Do you remember how long the knife was?

A It seemed to be about 14 inches long.

Q Did there come a time when you saw any blood coming from your sister,

Georgia Griffith?

A Yes.

Q Where was that blood coming from?

A The blood was on her right shoulder in the back and it was about seven inches across where the blood was running through.

Q Did there come a time when you were shot?

A Yes.

Q Would you tell the court as best as you can remember, Mrs. Pitzer, what happened just before you were shot?

A Well, I knew I was going to be next, and I said, "Please don't shoot me," and he put the gun to my head and shot me.

Q Ma'am, do you still have a scar where you were shot?

A Yes, right there.

Q Would you please turn around to

show the court?

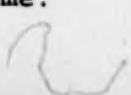
After you were shot, what do you remember happening next?

A Well, my eyes started swelling up, and it got so big I couldn't hardly put my hand over it, and I thought my eyeball was going to burst but it just hurt.

Q Judge, indicating where she indicated the scar was, it was in the center of her forehead.

Mrs. Pitzer, right after he placed the gun to your forehead and he fired the shot, did he push you or kick you or in anyway touch you?

A I was on the chair and he threw me out of the chair. It was a swivel chair. Then he put the chair on top of me, and Julia was next to me and she was conscious, and she took the chair off of me.



Q Were they able to get all of the projectile of the bullet that entered your forehead?

A No.

Q Where are the remains of the bullet, the fragments?

A Well, it's still in my head. They X-rayed it after surgery, a couple of days, and they said they couldn't get all of it, and he said the that part of the brain--

MR. TUNKEY: I will object, Your Honor. This is hearsay.

THE COURT: Sustained.

MR. ADORNO: I believe she can testify as to her own injuries.

THE COURT: She can if she has seen it by X-ray but not by what somebody else has told her, Counsel. I have sustained it.

Q [By Mr. Adorno] Have you

suffered any permanent injury or disability as a result of the gunshot wound to the forehead?

A Yes.

MR. TUNKEY: I will object to this. We pleaded to it.

THE COURT: I think for the purposes of this hearing, we can hear it. Go ahead. You may answer.

A I am blind in my right eye.

Q [By Mr. Adorno] Mrs. Pitzer, after you fell on the floor, do you remember being stabbed?

A No.

Q Did there come a time when you found out and you discovered you had in fact had been stabbed?

A Yes.

Q How many times or how many stab wounds did you find once you recovered in the hospital?

A One.

Q Where is that stab wound?

A On my side.

Q Did you see the individual
leave the house?

A No?

Q Did there come a time when you
saw you sister, Mrs. Sullivan, crawl to
the bedroom and contact the fire rescue
and the police?

A Yes.

Q Is Mrs. Sullivan here with you
today?

A No.

Q Where is she?

A She is in a nursing home. She
has been in a coma ever since it happened
and no one has been able to reach her.

Q She has been that way since the
night of September 23, 1976?

A That's right, she can't get well.

Q At any time, including that evening, did you offer any resistance at all to this individual?

A No.

MR. TUNKEY: Objection, leading.

Q [By Mr. Adorno] Did you hear anyone else offer any resistance whatsoever toward the individual?

A No, I didn't.

Q At the time that you were shot on the forehead, were you seated?

A Yes.

Q Did you make any advances, anything whatsoever toward this individual?

A No.

Q Other than just sit there.

A No.

Q Mrs. Pitzer, do you think you can identify the individual if you ever saw him again?

A I think so.

Q Look around the courtroom, if you wish, it is not necessary, but do you see the individual, and if you do, please point him out. If not, tell the court that you cannot.

A Well, I can't see who it is unless it would be him. It was about his size.

Q Indicating for the record, the defendant.

MR. ADORNO: No further questions.

MR. TUNKEY: No questions.

[Witness excused.]

THE COURT: Call your next witness, Counsel.

MR. TUNKEY: Your Honor, if this is the sister of Mrs. Pitzer, I will stipulate that her testimony is going to be cumulative to that of Mrs. Pitzer. I will stipulate that if she was to testify, she would testify to substantially the

same thing. It is cumulative. I object to it.

THE COURT: Overruled. Go ahead.

Thereupon:

JULIA SULLIVAN

was called as a witness on behalf of the plaintiff and, having been duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. ADORNO:

Q Mrs. Sullivan, if you will speak right up into that microphone when I ask you the questions and then everybody will be able to hear you.

Please state your name and age.

A Julia Sullivan--this scares me. I guess I am too close. Julia Sullivan, 73.

Q Mrs. Sullivan, did you have occasion to come down to Miami in September, September 21, 1976?

A I did.

Q Did you come down with Mrs. Pitzer, your sister, and Mrs. Griffith, your other sister?

A Yes.

Q How old is Mrs. Griffith?

A Sixty-eight.

Q Did you have occasion to stay with your sister-in-law, Kay Birk?

A I did.

Q Were you down here to visit your brother who was in the hospital at that time?

A Yes.

Q Did you stay with them on Wednesday and Thursday of that week?

A Yes.

Q On Thursday evening what were you doing?

A We were listening to the Carter and Ford debate.

Q Were your two sisters and your sister-in-law in the house?

A Yes. We were all in the front room.

Q Was there anybody else other than the four of you watching the debate?

A No.

Q Did there come a time when something unusual happened?

A Yes.

Q Tell the court what happened.

A Well, just all of a sudden it sounded like that he ripped the screen and jumped in just like a flash.

Q Did you say anything at that time?

A Yes.

Q What did you say?

A I said, "Praise the Lord."

Q Why did you say that?

A Because I believe--I am a

Christian and I believe in Jesus Christ, and when I said, "Praise the Lord," I was turning the affair over to him, for him to take charge.

Q When you saw him come in the house, did you notice anything in either of his hands?

A Yes. I seen the gun.

Q Was he wearing any disguise?

A Yes.

Q What type of disguise did you observe?

A Well, it looked like ribbons or pieces of material about this wide, one tied across here and one across here and one across here.

Q Indicating for the record, one across the forehead, one across the bridge of the nose and one below the lips around the chin?

A That's the way I remember it.

Q Do you remember what he said after he came into the house?

A Well, he said if we--I don't remember just exactly--not to make a fuss or anything, but he wanted us to do as he wanted to do, and for us--that he wouldn't, I understood, not hurt us.

Q Did there come a time when he told you to lie down on othe floor?

A Yes.

Q Did you, yourself, lie down on the floor?

A I did.

Q What was your position on the floor? In other words, were you on your back or side or stomach?

A More on my side.

Q Did he ever tie your hands?

A He did.

Q How did he tie your hands?

A Well, he had a thin rope and he tied, he wanted to tie them in back of my back, and I hate to admit that I am getting old, but I said I didn't know whether I could get both of my hands back of my back or not, and he said okay.

Q Did he tie them in the front?

A Yes.

Q Was anybody else lying on the floor besides you with their hands tied?

A My sister, Georgia.

Q And where were her hands tied?

A I didn't see them but in the back.

Q Were you able to see your sister, Mrs. Pitzer, once you were told to lie down on the floor?

A Yes.

Q Where was she?

A She was sitting in a chair.

Q How about your sister-in-law, Kay Birk?

A Well, I seen her lying on the floork too, and her hands were tied in the back.

Q Did there come a time when you saw your sister-in-law, Kay Birk accompany the defendant into the kitchen?

A I did.

Q What happened in the kitchen?

A Well, I don't know what all happened out there, but I did see him--she said she would get him--get him her money, and I could see the cupboard. She got a chair and climbed to the top shelf and took out what looked like a china, I don't know whether a cream pitcher or sugar bowl or something, and gave it to him, and then he stepped back and looked up and down to see whether he could see anything else in

there. Now, that's superstitious, I mean, adding that. He was wondering, I think, what else he could see in there.

Q Did there come a time when you heard gunshots?

A Yes.

Q Did you see this individual shoot any of your two sisters or your sister-in-law?

A I seen him shoot my sister, Ruth.

Q Did you see him shoot anybody else, either Julia or--

A I am Julia.

Q Excuse me. Either Georgia or Kay?

A No.

Q Did you see the individual stab any of your two sisters or your sister-in-law?

A I seen him stab Kay.

Q Do you remember was it more than once that you were able to observe him stab Kay?

A It seemed to me like numerous times.

Q Where was Kay when she was being stabbed?

A To my right, not very far, not much farther than this table.

Q Indicating for the record, about one to two feet.

Was she standing or lying down or bending down while she was being stabbed by this individual?

A She was standing and he stabbed her until she fell.

Q Did you hear any gunshots immediately after seeing your sister-in-law, Kay, fall to the floor?

A No.

Q Did there come a time when you

were shot?

A Yes.

Q Would you tell the court what ahppened just immediately before you being shot.

A Well, my sister was shot, and, of course, he was going around the room shooting, and I wondered at the time just how I'd feel and what effect it would have on me when I was shot, when he came in to shoot me.

Q Where were you shot?

A In the back of my head; on top of my head.

Q Indicating for the record, right in the very back?

A No. It's right here on top. I have got a double crown, I guess.

Q Did you feel the barrel of the gun to the back of your head?

A I don't know whether I felt it.

I felt when it happened. It was a stinging effect.

Q What happened to you right after you were shot in the back of the head?

A Well, then he went to my next sister.

Q Did you lose consciousness?

A No.

Q Do you remember being stabbed?

A No.

Q Did there come a time when you found out in fact that you had been stabbed?

A I knew I was stabbed but I just don't know exactly what time it was.

Q How many times were you stabbed that evening?

A I was stabbed five times and it went into my lungs and my lungs are not healed yet today, and they put a tube

in me, fourteen inches long, and bigger than my thumb, at the hospital and had holes in it, and I have been doctoring, and if I asked to come down two weeks ago, I couldn't have come, but I am better now.

Q Mrs. Sullivan, when you were shot in the back of the head were you lying down on the floor?

A I was.

Q Were your hands tied?

A Yes. Well, that's one thing I can't swear to because I think they were. I would say they were.

Q Did you offer any resistance whatsoever?

A No.

Q And when you were stabbed the five times, do you remember offering any resistance?

A No.

Q Were you lying down?

A I was.

Q Did you see the individual flee the house?

A I didn't see him flee the house but I seen him go out the door into the kitchen.

Q Did there come a time when you were able to crawl across the living room and into the bedroom and call the police and fire rescue?

A Yes.

Q How many days were you in the hospital here in Miami?

A Twelve.

Q Were you transported to a hospital and received treatment up in Indiana?

A No, I didn't. They didn't put me in the hospital up there.

Q Your sister, Mrs. Griffith, where is she today?

A She is in a convalescent home in Indiana.

Q What is her physical condition as of today?

A She is a vegetable. She doesn't know nothing. The doctor says that she will not be able to know anything.

MR. ADORNO: Nothing further.

CROSS EXAMINATION

BY MR. TUNKEY:

Q Mrs. Sullivan, you stated that you are a Christian. I ask you if you are able today to forgive this person who committed these acts on you and your family?

A I forgave him that night. I mean, I forgave him. I prayed. The bible says to give thanks for everything and I prayed for his soul, and when he gets the

death penalty I hope that he has a chance to accept the Lord before that time. It would be wrong for me to have any resentment against him.

Q Mrs. Sullivan, how is it that you know that David Washington is going to get the death penalty?

A Well, I was told that he was. The jury gave that.

Q Who told you that?

A I think it was in the paper.

Q If, in fact, that is inaccurate, that no sentence has been passed at this point---

A Well, it's my fault. I mean, that's what I---

Q That's what you gleaned from what you read?

A Yes.

Q My question to you is this:
"Do you believe that David Washington is

going to have to be penalized by God's laws or by man's?

MR GERSTEIN: I would object to this. It is argumentative.

THE COURT: Sustained.

MR. TUNKEY: That's all.

MR. ADORNO: Nothing further.

Thank you, Mrs. Sullivan.

THE COURT: One lawyer, per witness, please.

[Witness excused.]

Thereupon:

DAVID L. SIMMONS

was called as a witness on behalf of the plaintiff and, having been duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. ADORNO:

Q State your name, please, and your official position.

A David L. Simmons, Police Officer

with the Dade County Public Safety Department, Homicide Section.

Q How long have you been with the Homicide Section?

A Two years.

Q And how long have you been a Policar Officer with the Public Safety Department?

A About four years.

Q Did you have occasion to become involved in an investigation into the homicide of Katrina Birk and the attempted murder of Julia Sullivan, Georgia Griffith and Ruth Pitzer?

A Yes, I did.

Q What were your responsibilities in regard to that investigation?

A I was in charge of the investigation.

Q You were the lead detective in that case?

A Yes, I was.

Q What was your first involvement with that case?

A Well, on September 23, 1976, at approximately 11:30 p.m., I was contacted by my supervisor, Sergeant James Duckworth who advised me to proceed to the victim's residence, located at 10351 Northwest 28th Avenue.

Q [BY THE COURT] Give me the date and time again, please.

A September 23, 1976, at approximately 11:30 p.m. I then proceeded from the Homicide Office to the scene, arriving there at approximately 11:45 p.m.

Q [By Mr. Adorno] Would you describe the premises that you went to to the court, please.

A The premises consisted of a residence, a three bedroom residence, located on the east side of Northwest

27th Avenue. The residence was bordered by a chain link fence which surrounded the perimeter of the area itself, the residence consisted of three bedrooms and two bathrooms, a Florida room, a back porch area and a kitchen.

Q Did you have occasion to go inside the bedrooms, I mean, inside the premises?

A Yes.

Q What unusual did you observe in the living room area?

A Just prior to entering the living room itself through the front door, I noted that the front screen door, which entered into the living room itself, was cut. The screen had an approximately 17 inch incision, a vertical incision which was located approximately an inch and a half inward from the locking device of the door. It was a hook lock.

I then proceeded into the living room.

Q Let me show you a series of pictures marked as State's Exhibits 1-K, 1-P, 1-N, 1-O, 1-Q, 1-R and 1-T.

I will ask you to go through all of those and tell the court whether you recognize each and every one of them?

A Yes, I do.

Q Do they truly without going into them, do all of them truly and accurately depict what is portrayed there inasmuch as you saw them the night of September 23, 1976?

A Yes, sir.

MR. ADORNO: Judge, I would move them all into evidence.

MR. TUNKEY: Same objection as previously stated to the other photographs.

THE COURT: Overruled.

[Thereupon the photo-

graphs referred to
were marked as State's
Composite Exhibit No.
8 and received in Evi-
dence.]

Q [By Mr. Adorno] Let's start
with State's Exhibit No. 8, Composite No.
A, and I will ask you to please tell the
court where that particular exhibit fits
in the scene?

A State's Exhibit A is a photo-
graph taken of a portion of the living
room. The photograph was taken specifi-
cally in this area or portion of the liv-
ing room.

The wooden object shown in the
picture is the leg of a coffee table
which is located just in front of a daven-
port. The piece of twine located south
of the leg of the chair was knotted at
both ends and several inches in length.

The white shoe shown in the picture was a shoe worn by one of the ladies and there were apparent bloodstains on the shoe itself.

Q Would you hand that up to the court, please, and then describe the significance of State's Exhibit No. 8-B?

A State's Exhibit 8-B is a photograph taken from close up of the head of Katrina Birk, one of the ladies who was in the residence at the time of the incident. She was found on the living room floor resting in a prone position face down, and this photograph depicts the gunshot wound to the right side of her head located approximately four inches above and one inch behind the right ear.

Q Would you pass that one up to the court?

Let me show you State's Exhibit

8-G and ask you to place that in perspective with the scene as you saw it on September 23, 1976.

A State's Exhibit 8-G is a photograph taken from inside the living room towards the front screen door which was the apparent point of entry where the screen was as I described earlier. It shows the condition or portion of the condition of the living room itself, noting the clutter on the floor which was refuse left behind by fire rescue and police personnel who had responded there earlier to treat the live victims in the incident.

Also pictured in this photograph is Katrina Birk lying in the position that I previously described.

Q Would you pass that up to the court and then tell the court the location and significance of State's Exhibit 8-C.

A State's Exhibit 8-C is a photo-

graph taken inside the living room of the Birk residence. It shows the northwest corner of the living room and takes in a portion of the davenport, coffee table, shoe and two chairs, and a few end tables. One of the chairs is resting on its back.

Q Is that the area where Ruth Pitzer said she was seated at the time she was shot?

A That's correct. That's the general area.

Q Hand that one up to the judge, please, and I will show you 8-D and ask you to tell the court its relationship to the scene as you saw it.

Q State's Exhibit D is a photograph taken inside the living room of the Birk residence showing a closeup view of the coffee table which was located in the front of the davenport.

On top of the coffee table is a

white telephone. The cord to the telephone was cut. Also on top of the coffee table are several ceramic ash trays and a towel located on the floor underneath the coffee table.

Q Would you pass that up to the court, please, and I will ask you to do the same thing with State's Exhibit 8-F.

A State's Exhibit 8-F is a photograph taken outside the Birk residence within the yard, the backyard specifically, located outside the southeast corner of the residence. It shows a clothesline and secured to the clothesline is a lavender colored sheet. Upon checking the sheet there is an apparent piece missing from it. The sheet is crudely cut or torn from one of its corners.

Q Did you subsequently find out from the defendant, David Washington, that that sheet was torn by him in order to

make the disguise?

A That's correct.

Q And this has not previously been identified, but let me show you 1-S for Identification and ask you if you can identify it?

A Yes. 1-S is a photograph taken outside of the Birk residence in the yard located on the south side of the residence. It shows a portion of the grass, grassy area, and also in the picture is one of the head bands worn by Mr. Washington during the time of the incident itself. It was lavender in color.

Q Let me show you finally State's Exhibit 8-E and ask you to tell the court what that particular exhibit is and the significance thereof.

A State's Exhibit 1-E is a photograph taken inside the Birk residence. It was taken in the living room and it shows

a yellow colored towel which is partially folded and wrapped, and the picture also shows some black discoloration on the towel itself which were apparent places where the towel was wrapped around the gun when it was used as a muffling device. There was quite a bit of black powder residue on the towel.

Q Would you pass that up to the court, please.

Detective, did there come a time when you received information that the defendant, David Leroy Washington, was a possible subject in the Birk homicide?

A Yes, sir.

Q When did you receive that information?

A On the 2nd of November, 1976.

Q Did there come a time that you met David Leroy Washington?

A Yes, sir.

Q And when, where and what time did that take place?

A I first met David Washington at the Dade County Jail on November 5, 1976, at approximately 10:30 a.m.

Q Do you see that individual in the court room?

A Yes, sir. The gentleman is seated between the attorneys wearing the blue colored shirt and maroon colored slacks.

Q Indicating for the record, the defendant David Leroy Washington.

Were you by yourself at the time you first came in contact with the defendant?

A No, I was not.

Q Who was with you?

A Detective Chuck Major.

Q Did you have occasion to trans-

port the defendant or escort the defendant to Homicide in the Dade County Public Safety Department?

A Yes, sir, I did.

Q Did you have an occasion to have a conversation with him at that time?

A Yes, I did.

Q Prior to any conversation with the defendant, did you advise him of his Constitutional Rights?

MR. TUNKEY: Your honor, this is cumulative and I object.

THE COURT: It has already been stipulated as to the Constitutional Rights. Go ahead, please.

Q [By Mr. Adorno] Did you have occasion to have an oral conversation with the defendant with respect to your investigation of the death of Katrina Birk and the shooting of her three sisters-in-law?

A Yes, I did.

Q When did that conversation take place?

A It took place immediately after advising him of his rights, which would have been around 10:45 a.m.

Q How long did you have an oral conversation with the defendant just focusing in on your particular investigation?

A From 10:45 a.m. until 2:00 p.m., a short time before 2:00 p.m.

Q Did you take notes as he was making the statements?

A Yes, sir.

Q And you incorporated those in your notes?

A Yes, I did.

Q Using your notes, if necessary to refresh your recollection, would you tell the court as best you can what you might have said to him and he might have said to you in respect to the oral state-

ment that he gave concerning the killing of Katrina Birk?

A Mr. Washington indicated that he wanted to talk about the Katrina Birk homicide first. He said that there was quite a misunderstanding in reference to that case as evidenced through newspaper articles that were written about the case a day or two after the incident.

He said some of the accounts that were written in the newspaper were incorrect and he wanted to set the record straight so to speak.

He went on to say that the portions of the newspaper article where they spoke of a person coming into the house and immediately shooting all of the occupants therein was completely inaccurate, and he wished to explain exactly what happened.

He then stated that he knew

Katrina Birk for approximately two years; said that he came to know her through her husband, Omer Birk.

He didn't refer to him as Omer, but Mr. Birk. He didn't know his first name. He stated that he came to know Mr. Birk through dealing with Mr. Birk and another proprietor who owned the used furniture business that the Birks formerly owned, a Mr. Martin.

He stated that is was more or less a pawn shop, that he burglarize residences in the area of his neighborhood and various areas throughout Dade County and that after burglarizing these residences normally the items that he would take would be in the form of televisions or stereos which were easy to sell. He could get quite a bit of money for them.

He said that he had been to the Birk's residence on numerous occasions

and had learned about a year ago that Mr. Birk was hospitalized as a result of some sort of disease or illness.

During the ensuing year or year prior to this incident, he said that he continued to deal in stolen merchandise and would sell it normally at the business which used to be owned by the Birks but was sold to Mr. Martin. Martin's Furniture is located just behind or east of the Birk residence. It is located at Northwest 103rd Street and 27th Avenue.

He stated that on numerous occasions, generally several times a week, he would bring televisions and stereos to Martin's Furniture Store. He would sell the items to Mr. Martin, and on occasion Mr. Martin, who was familiar with the Birks in that they were in the same type of business, would often go to the Birks residence and ask Mr. or Mrs. Birk, which-

ever the case might be, for case with which to pay Mr. Washington for the merchandise if he didn't have enough cash on hand in the store.

He came to know that the Birks kept cash in their residence; that they continued in the sale of used furniture, that they sold the furniture from their garage located at the rear of their residence, and had been to the residence on numerous occasions and had met Mrs. Birk on several of those occasions.

He stated that he had been to Martin's Furniture Store actually within a few days of the incident; that he had been there earlier in the week, that he had sold several televisions, I believe he mentioned two specific television sets that he sold to Martin's Furniture Store, and that was the last time that he was in the vicinity of the Birk residence

prior to September 23, 1976.

He went on to relate that he decided to rob the Birks because he knew that there was money there and during this period, during the interview, one of my questions to him, which was an area of curiosity to me as an investigator, was if he knew the other three people who were in the residence, did he know the other old ladies.

He said that no, he didn't. He wasn't aware that they would even be there that night, that he had never seen any of those women before and had in fact expected only to find Mrs. Birk alone at the residence that evening.

He stated that on September 23, 1976, he left his residence at approximately 7:30 p.m. Prior to leaving his residence he took with him a .22 caliber revolver, a piece of rope which he had

obtained from a trash pile somewhere in the neighborhood, and also a large kitchen knife.

He said he placed the kitchen knife inside the waistband of his trousers, that he placed the rope also inside his trousers, and that he placed the gun inside a dictionary which he brought with him.

He explained that the dictionary was brought for the purpose of concealing the .22 caliber revolver, that he had cut the pages inside the dictionary so as to accommodate the weapon itself, and then actually placed the weapon inside the dictionary, closed the cover and he carried that with him that night.

He said that he took a bus and went to the area of the Birk residence, got off the bus, arriving in the neighborhood of the Birk residence at approxi-

mately 7:45 to 8:00 p.m., somewhere around there.

He said that after he got off the bus at that particular time in September, at that time of the evening, it was just starting to get dark, and that he waited until dark by sitting on the bus bench after getting off the bus in the area of the Birk residence. When it became dark he proceeded to the alleyway which divides the furniture store from the east side of the Birk residence, walked up the alley which was dark, went to the fenced-in area of the Birk residence, and waited outside the Birk residence for quite some time.

He stated that during that period of time that he was waiting outside the Birk residence, he took off his jacket. He said that he was wearing on that evening a green colored Army-styled jacket,

a gold colored tank top shirt, blue jeans, bell-bottoms, and brown Hush Puppy shoes.

He stated that he took off the green colored Army jacket and put the dictionary inside the jacket, wrapped it up and concealed it in some bushes just outside the chain link fence. He then proceeded into the yard of the Birk residence, positioning himself outside the window of the residence.

He stated that from outside the residence he was able to look inside, that there were lights on inside and he observed not only Mrs. Birk, who he expected to be there, but also other old women.

Upon seeing the three other women, he stated that he wasn't quite sure as to whether he was going to carry through with his plan to rob Mrs. Birk. He wasn't counting on them being there and he wasn't

sure whether he could handle them or not.

He said that during this period of time, he went from window to window outside the residence keeping an eye on all of the occupants. He finally decided at one point that he would go ahead with his plan to rob Mrs. Birk but he was going to wait until all of the occupants, that is the other three women and Mrs. Birk, until they all became stationary.

At that particular time I asked him to explain what he meant by "stationary" and he stated that he meant that he was waiting for all of the people, all of the women, to gather in one location at one time, at the same time, and that they finally did in the living room of the residence.

He stated that he looked through the living room window, saw that they were

watching the Ford-Carter debate on television and made a comment to me that he could probably tell me more about the Carter-Ford debate than they could, that he was there that long and had been watching what was going on inside the living room with that much concern.

He stated that he finally went to the rear of the residence where he saw the sheet hanging on the clothesline. He made a decision at that time to disguise his face because he stated that he was afraid that Mrs. Birk--well, he said without any question Mrs. Birk could identify him from all the previous occasions he had been over to the residence. But another reason that he gave for disguising his face was the fact that he didn't want the other three women to be in a position or be able to ever identify him if it ever came up.

He took the sheet, tore a piece of it and formed several headbands which he referred to as bandages.

He stated that he knotted the material, there were strips of material, he knotted them, fitted them around his head so as to disguise a portion of his forehead, nose and chin.

MR. TUNKEY: Judge, I will object as to the narrative response of the witness, and number two, to the fact that this is simply a recounting of that which has already been admitted in evidence, the defendant's statement in written fashion.

THE COURT: I am not aware that it is a recounting. Counsel has not had the opportunity to review the statements. If there is anything that is duplicitous, we will certainly recognize that, sir, and give it no further heed.

Go ahead, please.

A Then he placed the disguise over the portions of the fact that I just mentioned. He proceeded to the front door of the residence where he had previously noticed that the front door, the front inner solid door was open. However, the screen door was closed and latched. He then went to the front door, withdrew his knife from his trousers, and then he cut the screen with the knife and also at the same time lifted the latch with the knife, opening the door, and he went into the living room.

 He then described where the various women were seated within the living room itself. He said that he produced his .22 caliber revolver, that he held the gun on the women and ordered them to all get down on the floor, that it was a robbery, for them to be quiet. If they followed his instructions, he would not hurt them.

At that particular time, Mrs. Birk, who he recognized, said something to the effect that if you want the money, I will take you to the money if you let me up. She got to her feet, went to the kitchen area of the residence with Mr. Washington. She opened up the cupboard and took down a silver colored canister which contained some bills and a large amount of cash. She gave him the money. He placed the canister upon the kitchen table, opened it up momentarily and checked the contents, dumped it out to see how much money there was. He wasn't expecting to find that small amount of cash in the house.

However, he was frightened and he was scared that something might not go right, that he wanted to take what he had and go.

He then escorted Mrs. Birk back

into the living room area of the residence. During this period of time he recalled that Mrs. Birk made frequent references to her son who was expected home at any moment, that he was out for the evening and could come home at any time, and she didn't want him harmed.

She asked Mr. Washington to take the money, to go, and then made further comments such as "You're a nice boy, why don't you take the money and go and don't hurt us."

He stated that he didn't feel at that particular time that he was recognized by Mrs. Birk, however, he characterized that particular comment as playing on his intelligence. He went on to relate that after he escorted Mrs. Birk back into the residence that he took out the rope that he had inside his trousers.

He stated that prior to entering

the residence he had divided the section of rope that he took with him into four pieces; one with which to tie each victim with.

He then tied the victims, tied two women who were waiting on the floor, and then he also tied Katrina Brik, who he had assume the same position as the others on their stomach, flat on the living room floor.

He then went to the living room closet where he obtained several towels and after obtaining the towels, he went to where the women were tied and stuffed the towels into their mouths so as to gag them.

He stated that he was rechecking the knots that he bound each of the victims with and also was rechecking the gags or the towels that he had placed into their mouths, and that apparently Mrs. Birk had managed to get to her feet.

He stated that Mrs. Birk had started for the kitchen area of the residence. At that point he ran to where she was, grabbed her, tried to throw her back onto the floor. There was a brief struggle during which he is trying to subdue her and throw her back on the floor, however, Mrs. Birk was offering some degree of resistance and at that point, he withdrew the knife and took the knife and stabbed her several times on the back and sides of her body.

He stated that after stabbing her numerous times with the knife that she collapsed to the floor and after collapsing to the floor, he took the revolver and wrapped a towel around the barrel so that the gunshots would not be heard by neighbors or not as loud, anyway.

He then walked up to where she was lying on the floor, placed the gun against

her head and fired one shot into the back of her head and fired one shot into the back of her head with the towel wrapped around the barrel.

At that point he described the situation in the living room as that the other women who were on the floor tied up and gagged, that they started to squirm. He characterized them as panicking after seeing what happened to their sister.

He then went to the other two women who were on the floor, put the gun to their heads, fired one shot into each of their heads, and also stabbed them several times.

After doing this, he turned on the woman who remained seated in the chair during this entire incident. He recalled her saying something to him about "Please don't shoot me," or something to that effect,

and at that point he put the gun to her head.

At that point, he also stabbed her. She fell to the floor. He ran into the kitchen, grabbed the money, ran out the back door, grabbed his jacket and dictionary that were placed in the bushes outside, ran through the alley, across the street to the Shell station, located on Northwest 103rd Street and 27th Avenue, flagged a ride with an unknown person who he offered to pay for a ride, stated that the person did in fact give him the ride after he gave him four dollars, that he asked the person to drive him to the vicinity of Northwest 62nd Street, which he did, dropping him off at 62nd Street and 27th Avenue.

At that time Mr. Washington stated he got out of the car, walked back to his residence, disrobed and counted the proceeds.

He stated that the canister held, as he recalled, eight dollars, eight one dollar bills and a large amount of change, which totaled in the area of \$120, mostly in quarters.

The following day he went to J. M. Fields where he made some purchases with the money.

Afterward he went to supply some details about the Meli case which I told him I had nothing to do with and I wasn't there to ask him any questions about that particular case. But he did mention that the gun he shot the women with was the gun that he stole from the Reverend Daniel Pridgen two days earlier. It was the same gun.

He then stated that the knife that he used to stab all the women with was the same knife that he used to stab Frank Meli with a few days later after

this incident.

Q Upon the conclusion of the oral statement, what, if anything, did you do?

A I then secured the services of one of our stenographers to take a formal statement from Mr. Washington as to those facts.

Q And did you take a formal statement?

A Yes, I did.

Q Was that formal statement typed?

A Yes, sir.

Q And did you give the defendant an opportunity to read that formal statement and make any corrections as to truth or what occurred on the night of September 23, 1976?

A Yes, sir.

Q Do you have the rights waiver form with you that was executed?

A Yes, I do.

MR. ADORNO: Based upon the stipulation, Judge, I would like to make that a part of a composite exhibit along with the confession given in this particular case.

THE COURT: Make that a Composite Exhibit as earlier.

[Thereupon, the documents referred to were marked as State's Composite Exhibit No. 9 and received in Evidence.]

Q [By Mr. Adorno] Detective, did you ever inquire yourself, or did he tell you why he committed the Birk, the Pridgen homicide?

A Yes.

Q Would you tell the court what the conversation was of the defendant concerning that specific matter?

A He stated that he did all of these crimes for one reason and that was money.

He stated that he needed money. He wanted money and he went out and got the money. He stated that had he got enough money from the Reverend Daniel Pridgen, which was the first case in chronology, that he wouldn't have gone on and murdered the next one.

He stated that if he had gotten enough money from the second one, which would have been Katrina Birk, that he wouldn't have gone on the murder Frank Meli, and then when he described--when I asked him about the Meli case, he stated that where he went wrong was involving his brother and another person in that case.

If he had acted alone the chances are that the police would have never caught him, that we wouldn't have been there

talking at that particular time, and that he got greedy. He made a point to say that.

He said that in the Meli case he started to get greedy. He wanted more money, and that if we hadn't caught him in that particular incident that he wouldn't have been satisfied, that he would have gone on and tried to obtain some more money.

MR. ADORNO: Your witness.

CROSS EXAMINATION

BY MR. TUNKEY:

Q Did he tell you what he wanted the money for?

A Not specifically, no. We inquired of his background and he told us about his wife and his children, and he did mention that he used some of the money to help his wife and to help his children.

Q Did he tell you that he bought

clothes for his baby at J. M. Fields?

A Yes, he did.

Q Now, on November 5 when you first came into contact with David Washington, did he, at that time, give you any indication, either verbally or through a printed document, that he wished to have an attorney present at that time?

A No. We executed a written document, the right[s] waiver form.

Q That was prior to the written statement, wasn't it?

A That was incorporated into the statement. He was advised all over again of his Constitutional Rights, and we also, when we got to this part of the form about the attorney, I asked Mr. Washington, I told him that he was aware that you were his counsel, and that if he wanted you to be there at that particular time that we would contact you, and he stated that

he did not, and that he would talk to us without you.

MR. TUNKEY: That's all.

MR. ADORNO: Nothing further.

[Witness excused.]

THE COURT: We will break now until quarter to two.

[Thereupon, a recess was taken until 1:45 p.m. of the same day.]

- - -

AFTERNOON SESSION

[The sentencing reconvened at 1:45 p.m., pursuant to the taking of recess.]

Thereupon:

HUBERT LAWRENCE ROSOMOFF
was called as a witness on behalf of the plaintiff and, having been duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. ADORNO:

Q Would you state your name, please, and occupation?

A Hubert Lawrence Rosomoff. I am physician and particularly a neurosurgeon.

MR. ADORNO: Do we have a stipulation as to the doctor's qualifications?

MR. TUNKEY: Yes.

THE COURT: Thank you.

Q [By Mr. Adorno] Doctor, did you have occasion to examine a Georgia Griffith probably in the early morning hours of September 24, 1976?

A Yes, I did.

Q Sir, where did you conduct that examination?

A I first saw Miss Griffin on the way to the operating room, she having come through the emergency room at Jackson

Memorial Hospital.

Q Sir, would you describe for the Court any injuries that you found on Georgia Griffith?

A Well, at this time she had an obvious gunshot wound to the right side of the head and a stab wound in the right chest and this had already been treated down in the emergency room with a chest tube.

Q Would you show the Court, please, where the entry on the gunshot wound was to her head?

A Just right here in the middle of the head.

Q Within the right side of the head.

A Right side of the head.

Q Were you able to find an exit wound?

A There was no exit wound, although

the X-rays of the head showed the bullet had gone straight through the brain and had lodged underneath the bone on the opposite side.

Q Would you indicate to the Court where the projectile lodged?

A Here, straight through and through.

Q Entry and lodging almost being parallel?

A Yes.

Q Could you describe for the Court the stab wound that you observed?

Q Well, the stab wound was in the right chest. I didn't see it in its entirety because it had already been covered with a bandage and the chest tube was coming out and at this time we were very much more concerned with saving her life from the missile wound in her head and I can't give you all those details.

Q Did you perform any surgery on Georgia Griffith at that time?

A Yes, I did.

Q Would you tell the Court what that was?

A Yes. There was actually two operations to the head because it requires first an operation on the right side, which is the entry area of the missile, and a second procedure on the opposite side in order to deal with what is usually a blood clot on the far side rather than the near side, and also access to the missile itself in an attempt to clean the track of the wound which goes all the way through the brain in this particular case.

Q Was your operation successful?

A As far as the technical aspects, yes.

Q What was the last time that you saw Georgia Griffith before she returned

to Indiana?

A At the time of her discharge from the hospital on 10/30/76.

Q Sir, will you describe her condition to the Court at that time?

A At this time this lady was still unconscious. There was a reflex capability of moving all four extremities, but she was not in contact with reality or in any way able to deal with commands that were given to her, and I would describe her as comatose and what we would call vegetative.

Q Would you please tell the Court what you believe the prognosis at this time is as to Mrs. Georgia Griffith being able to ever recover from the injuries suffered that evening.

A I would say that based on past experience and in particular in this age group that the chances of her improving beyond this particular state are really

remote.

MR. ADORNO: Thank you, Doctor.

MR. TUNKEY: No questions.

[Witness excused]

MR. ADORNO: Based on prior stipulation, I will call Dr. Wright who is the medical examiner and I will provide a copy of the protocol to assist the Court.

Thereupon:

RONALD KEITH WRIGHT

was called as a witness on behalf of the plaintiff and, having been duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. ADORNO:

Q Would you state your name, please, and position?

A Dr. Ronald Keith Wright. I am deputy chief medical examiner of Dade County, Florida.

MR. ADORNO: Are the doctor's

qualifications stipulated to?

MR. TUNKEY: As a forensic, pathologist, yes.

Q [By Mr. Adorno] Doctor, in your official duties as deputy chief medical examiner, did you have occasion to conduct an autopsy of Katrina Birk on September 24, 1976?

A Yes, I did.

Q And where was that autopsy performed?

A At the medical examiner's office in Dade County.

Q Would you tell the Court what findings you made after conducting the autopsy of Katrina Birk?

A Basically, we found a gunshot wound to the back of the head and nine stab wounds, five of which were deep wounds, four of which were superficial.

Q Doctor, did you take any photographs at the medical examiner's office that would assist you in showing the Court where these various wounds were located in the body of Katrina Birk?

A Yes, I did.

Q Would you please pull them out for me?

A Certainly.

THE COURT: Please show them to Counsel.

Any objection to them, Counsel?

MR. TUNKEY: Yes, Your Honor. They are duplicitous and only serve as an attempt by the State, in my estimation, to inflame the Court in its decision. They are irrelevant, and immaterial.

THE COURT: Overruled.

We will receive them as evidence in the case.

[Thereupon, the photographs

referred to were marked State's Exhibit No. 10, composite, and received in evidence.]

Q [By Mr. Adorno] Doctor, let me show you State's Exhibit No. 10, A through E, being numbered on the back. Would you, by referring to the specific letter, would you describe to the Court the wounds that you found on Katrina Birk when you performed the autopsy?

A Yes. State's Exhibit 10-E is a photograph which shows the head of Katrina Birk and shows the entrance wound which is located four inches above and one inch behind the right ear. This wound, incidentally, did not penetrate the brain due to the fact that she had a condition known as hyperostosis frontalis interna which means a thick and is occasional finding of elderly females. The photograph which is State's Exhibit D, or

State's Exhibit 10-D, shows it barely, shows the wound here on the front of the abdomen, and it is shown somewhat better in State's Exhibit 10-A, which shows the stab wound located in the abdomen just above the umbilicus and also shows a stab wound on the right side. Both of these stab wounds entered the liver, however, were no related with the one stab wound which was the priamry cause of death. The others would have been fatal in time. Photograph number State's Exhibit 10-B demonstrates the two major stab wounds of the back, the first, in the upper left back, penetrated into the left lung, into the aorta. This was a small tear in the aorta from which Mrs. Birk eventually bled to death. The other stab wound here, lower in the left side of the back, is a wound which, although it entered the peritoneal cavity, the cavity of the abdomen, from

the back, struck no major organs.

Photograph, State's Exhibit 10-C, shows two of the five major stab wounds which are located in the left flank of the body, both of these wounds are quite deep, entering the liver; and it also shows the four minor stab wounds which did not penetrate any distance appreciably.

Q Doctor, how many stab wounds did you find on the body of Katrina Birk?

A Nine.

Q How many of those stab wounds would have been fatal?

A Four of the stab wounds would have been expected to be fatal in time. One of the stab wounds was relatively, is more rapidly fatal. The ones to the liver are quite potentially fatal.

Q Doctor, how much force would be necessary to inflict the five major stab wounds that you found on the body?

A It depends on the sharpness; the sharpness of the knife.

Q Were you able to tell at all from the photographs observing the pictures, and seeing the body itself?

A I cannot determine. It depends upon the sharpness of the point primarily of the knife. It requires at least fifteen pounds of pressure under ordinary circumstances to drive the knife in. There is some evidence, particularly to the wound which is in the upper left back, that the knife was driven to its full depth; that is, there is a small abrasion upon the skin. So it would seem that it was driven all the way in. However, lacking any idea of the sharpness of the point I could not say, except this minimum figure which is about fifteen pounds.

Q Doctor, what was the cause of death?

A Mrs. Birk died as a result of multiple stab wounds of which the most severe was the one in the left back.

MR. ADORNO: Thank you, Doctor.

THE COURT: Cross, Counsel.

MR. TUNKEY: None.

[Witness excused]

Thereupon:

JOHN SPIEGEL

was called as a witness on behalf of the plaintiff and, having been duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. ADORNO:

Q Detective, would you please state your name?

A John Spiegel.

Q And your occupation?

A Police officer with the Dade County Public Safety Department.

Q Assigned to any specific unit?

A Homicide section.

Q How long have you been with the homicide section?

A Two and a half years.

Q How long have you been a police officer with the Public Safety Department?

A Four and a half years.

Q Did there come a time when you became involved in the investigation of the death of Frank Vincent Meli?

A Yes.

Q What were your duties with respect to that investigation?

A I was the lead investigator into that case.

Q When did you first become involved in that particular investigation.

A Approximately four a.m., Wednesday, September 29th.

Q Sir, what was the first thing you did with respect to the investigation

on that date and at that time?

A I responded to the residence of Angelo Meli, a brother of Frank Meli, and conducted a brief investigation at that time in to the alleged ransom demand.

Q Sir, what was that ransom demand?

A The demand was that Angelo Meli was to take \$2700, the cancelled bank book, and place the same into a brown paper bag, take a taxicab to the area of Northwest 79th Street and 27th Avenue where there is a Royal Castle, take the bag with the money and the bankbook and put it behind the Dempsey Dumpster, and he was instructed first to go approximately an hour later to the area of the Biscayne Dog Track, and after approximately an hour's time he would find his brother there. A short time after he received a second phone call from the same black male who was later identified as David

Washington to the effect that instead of going to the Biscayne Dog Track, go ahead and go over to the main Sears Store across the street from the Royal Castle and walk around in there and about a half-hour later he would find his brother. He was assured that no harm would come to his brother; that once the ransom demand was met that his brother would be released unharmed. He was admonished not to call the police and to trust David Washington, and on that basis his brother would be released unharmed.

Q Were you able to determine when Frank Vincent Meli first met or contacted David Leroy Washington?

A Yes. The investigation indicated that Monday, September 27th, is when David Washington first began calling the victim in regard to the victim's 1974 Camaro

which he had placed an ad in the newspaper trying to sell it, and on Monday Washington called three or four times, ver interested in the car, telling the victim that was just the kind he wanted; that it had bucket seats and so forth and so on. He also told the victim that he was employed at the Sears Auto Tire Center at Northside, and that he had no car. Therefore, he couldn't come to where he was to look at it and that he would like for the victim to bring this car to him approximately noontime on Tuesday when he allegedly had a lunch breat. Then he would look at the car and if everything was okay he would pay him the full \$3600 for it; that if somebody in the meantime had wanted to buy

the car and wanted to give him a down payment, that Washington would give him the full \$3600, that he wanted the car very much. On that basis an arrangement was made on Monday for Frank Meli to meet the victim or to meet Washington at the tire center around noon.

Q Did that meeting take place on Tuesday?

A Yes, it did. On Tuesday the investigation indicated that the victim and his car were seen at the Sears Tire Center approximately noontime or shortly thereafter, and the victim was also observed driving away from his appointment in this car by his roommate who was aware of the telephone calls from, at that time, the unidentified black male, about the car.

Q Did there come a time when you discovered or found the 1974 Camaro

belonging to Frank Vincent Meli?

A Yes. Thursday, approximately 7:20 p.m., the car was located at Tally Embry Ford, 90th Street and Northwest 7th Avenue.

Q Were you able to determine when that car first got to that particular location, Tally Embry Ford?

A Yes. Contacting the personnel there indicated that a black male, who was later identified as David Washington, who was posing at that time to be Frank Meli came to the car dealership in the early afternoon on Tuesday, the 28th, and he wanted to sell the car, and they negotiated for a while and gave the black male posing as Frank Meli a check for \$2600. That was on Tuesday afternoon.

Q Do you know whether the defendant made any attempt to cash that check on Tuesday afternoon?

A Yes.

Q Where was that attempt made and was it successful?

A Later in the afternoon on Tuesday, the 28th, Washington took a taxicab from Tally Embry Ford to go to the bank and made one stop where he had the taxicab driver park the car on Northwest 65th Street and 29th Avenue. Washington exited the cab for a few minutes, came back and from there they went to the bank. Washington made one attempt on Tuesday, shortly before three p.m., to cash the check and the teller refused to cash it. Washington then telephoned Tally Embry Ford complaining that he was unable to cash the check and was told by the Tally Embry Ford that all would be taken care of in the morning; that they would make sure the check would be cashed.

Q We are speaking of Wednesday

morning that an attempt to cash the check was made again by the defendant?

A Wednesday morning he successfully cashed the check at the Southeast First National Bank Downtown.

Q During that period of time while the defendant was trying to cash the \$2600 check, what arrangements, if any, were you making toward getting the ransom demand met?

A One of the requirements of Washington of Angelo Meli during one of the two ransom demands on the phone was that he was to, Angelo, was to get the money from the Fort Lauderdale bank account. He found out that the victim had a joint account with another family member at a bank in Fort Lauderdale which had approximately \$2700 in it. I went with another family member, other than Angelo, to another family member's

looked inside and looked all around and then walked a few more feet north and stood around the area on the east side of the Royal Castle. This was a few minutes before Angelo Meli made the drop.

Approximately five minutes or three minutes to three o'clock Angelo Meli arrived in a taxicab, exited the taxicab and put the bag where he was supposed to. Angelo hesitated for a few moments and Washington was watching him very carefully. I took two photographs of Washington at that location. Angelo then walked off per his instructions to the Sears store and Washington stood around for a few minutes and then he walked to the Burger King where I lost sight of him. At that time he was wearing red, white and blue sneakers, Washington was, and a few minutes later it appeared to me to be the same negro male was back

in the area of the Royal Castle, but he had different clothes on and a different hat. We watched this gentleman for the time that he was there, and he was there only a few more minutes and then he left on a bus and went north.

We stayed at the drop point and surveilled it for a total of four hours. The money was not picked up and at the conclusion of that time Angelo Meli went back, picked up the bag and got into another taxi and went home.

Q At the time that you first saw David Leroy Washington, did you know what his involvement was in this particular case?

A No, I didn't.

Q Were you photographing any other individuals who were suspicious in the area of the Royal Castle?

A Yes, we were.

Q What did the members of the homicide unit do Wednesday night?

A We began to search for the car.

Q How about Thursday?

A On Thursday, we had not only members of the homicide section but we had all detectives from each district begin to look for the car and finally at 7:20 p.m. we found it.

Q And after finding the car at 7:20 p.m. on Thursday night, in which direction did your investigation focus?

A It focused on an effort to locate the taxicab driver who the employees recalled that Washington, or whoever he was at that point, took a cab from Tally Embury to the points unknown to them. We succeeded in locating the taxi-cab driver who picked up Washington at 2:16 p.m. on Tuesday and from locating that individual we were able to pinpoint the area where Washington made a stop en route to the

bank around 65th Street and 29th Avenue. On the basis of that, a re-search was conducted in several of the residences based on owner information as per tax rolls, and at that point our investigation focused on the residence immediately across the street from the Taylor residence which later turned out to be the scene.

On the basis of that, when personnel from homicide section entered the Taylor residence about 7:10 a.m., on Friday, October 1st, a money wrapper was located inside the house.

Q Whose house are we talking about?

A The Taylor residence, 6520 Northwest 29th Avenue,

Q Did you later learn David Leroy Washington also lived at that house?

A Yes.

Q What relationship, if any, is

Nathaniel Taylor or Robert Taylor to the defendant?

A They are stepbrothers.

Q You may continue; what happened then?

A The money wrapper initially was inconclusive as far as being able to positively determine that it was part of the proceeds of the sale of the car or the cashing of the check. However, based on the fact that it was found in the house, Nathaniel Taylor was interviewed and from him we obtained--he gave voluntarily a consent to search the residence thoroughly. On the basis of that consent to search, a search of the residence and the yard around was done. At approximately 2:30 p.m. David Washington approached two detectives that were on the scene at that time and advised them that he was the one that killed Frank Meli, and on the basis

of that Washington subsequently gave a formal statement to that effect.

Q At the time that the defendant, David Leroy Washington, surrendered to or came up to two homicide detectives, was Nathaniel Taylor in custody in the homicide office?

A He was at the office.

Q I will show you State's Exhibit 1-W for identification and ask you if you recognize that?

A Yes, I do.

Q Does it truly and accurately depict what is portrayed therein as was first observed on October 1st, Friday, 1976?

A Yes, it does.

MR. ADORNO: The State would move 1-W in evidence, Your Honor.

MR. TUNKEY: No objection.

THE COURT: Mark it received.

[Thereupon, the photograph referred to was marked State's Exhibit No. 11 and received in evidence.]

Q [By Mr. Adorno] Would you tell the Court what State's Exhibit No. 11 is and please show it to the Court?

A Your Honor, this depicts the interior of the living room of the Taylor residence at 6520 Northwest 29th Avenue. Parked inside was a Honda Motorcycle. There is a mattress on the floor and this counter top is adjacent to it. This is the front door here, and this faces east onto 29th Avenue.

MR. ADORNO: I have no further questions, Your Honor.

THE COURT: Cross, Mr. Tunkey.

CROSS EXAMINATION

BY MR. TUNKEY:

Q Detective, you took a statement

from David Washington with reference to this case, am I right?

A I was present, yes, sir, when the formal statement was given.

Q And you were the lead investigator on this investigation?

A Yes, sir.

Q The Meli case.

A Right.

Q Did you believe that David Washington killed Frank Meli?

A Yes, with help.

Q Do you believe that he was--I understand your answer. Do you believe he was personally responsible for the death of Mr. Meli?

A Yes, I do.

Q Have you ever testified otherwise?

A I believe I have testified that in my opinion Nathaniel Taylor also

participated in the stabbing of Frank Meli.

Q So you are simply saying that you do not believe he acted alone?

A Right.

MR. TUNKEY: That's all of this witness.

THE COURT: Anything else on redirect?

MR. ADORNO: No. Thank you.

[Witness excused]

Thereupon:

CHARLES ZATREPALEK

was called as a witness on behalf of the plaintiff and, having been duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. ADORNO:

Q Detective, please state your name and official position.

A Charles Zatrepalek. I am employed at the Dade County Public Safety

Department. I work within the homicide section.

Q How long have you have been with the homicide section?

A Approximately fourteen months.

Q And how long have you been a police officer with the Public Safety Department?

A Six and a half years.

Q Did you have occasion in your official duties to become involved in the investigation into the death of Frank Vincent Meli?

A Yes, I did.

Q And based on your involvement and participation in that investigation, did you have occasion to come into contact with David Leroy Washington?

A Yes, I did.

Q Do you see that individual in the

courtroom?

A Yes, I do.

Q Would you point him out?

A It's the gentleman sitting at the defense table in the blue shirt.

Q Indicating, for the record, the defendant Washington.

When did you first see the defendant?

A It was on the morning of October 1st, approximately seven a.m. in the morning.

Q And where?

A At his residence which would be 6520 Northwest 29th Avenue.

Q Did you have any conversation with him at that time?

A No, I didn't.

Q Did you have occasion to be back in that vicinity later on that day?

A Yes, approximately 2:40 in the afternoon I was in that vicinity.

Q Were you by yourself.

A No, sir. I was with Detective Wolf.

Q What was the purpose for your being there at that time?

A Detective Spiegel had asked me and Detective Wolf to proceed to the 6520 Northwest 29th Avenue address in order to locate a man by the name of Nathaniel Taylor. When we arrived there, we knocked on the door and there was no response. We contacted Detective Spiegel at which time he told us that Nathaniel Taylor was in the homicide office.

Q At that time did you receive information from Detective Speigel that he had obtained a consent to search the premises, 6520 Northwest 29th Avenue?

A Yes, we did.

Q Did you begin conducting a search of that particular area?

A Yes. We returned to the residence and just prior to us starting the search, Mr. Washington came walking down the street with his hands on his head, his pockets turned inside out, at which time he yelled to us and yelled "I'm David Washington. You guys are looking for me."

Q Did he say anything else as he approached?

A He was within about five feet of us and said, "I'm David Washington. You got my baby brother, his girl and their baby downtown. I'm the man that you're looking for. I'm the man that killed the white boy."

Q And did he make any motions at that time while he was making that statement.

A Yes. He pointed over to a tree and said that after he killed the white boy that he had buried him underneath the tree and he pointed toward his house.

Q Prior to him making that statement, had your investigations led you to believe that there was in fact someone buried in that location?

A Yes. Detective Wolf had found what he thought was a grave at that time.

Q What, if anything, did you do with the defendant at that time when he made those statements?

A He was somewhat excited so we took him off the middle of the street to the sidewalk area. I told him who I was. I said: "I'm Charles Zatrepaek, a police officer with the Dade County homicide." He was somewhat excited and I said: "Calm yourself down, David." Detective Wolf at that time went and got hold of a radio and

contacted Detective Sergeant Felton and asked him to come to the scene.

Just prior, before Sgt. Felton got there, I said, "David, before you say anything, let me explain your rights to you," at which time I began reading him his rights.

Q Sir, did there come a time when you transported him down to the homicide office?

A Yes, we did. Sergeant Felton and myself did.

Q Did there come a time, once you arrived at the homicide office, that you had an occasion to have a conversation with the defendant?

A Yes, we did.

Q Approximately what time did that conversation begin?

A It was approximately 3:10 to 3:15 in the afternoon when again I

explained to him his constitutional rights. At this time I showed him the rights warning sheet that we use at the office there.

Q Do you have that rights warning form with you?

A It's part of this case file, yes, sir.

Q Can you find it without too much difficulty?

MR. TONKEY: JUDGE, I stipulate he read him his rights.

MR. ADORNO: I accept that.

THE COURT: Let him find a copy of it, please, and make it a copy with the statement that had earlier been alluded to at the time of the original plea.

Q [By Mr. Adorno] At the conclusion of your testimony if you can find this please bring it back to me and I

will place it in the court file since there is a stipulation.

Who was present during the taking of the oral statement from the defendant?

A Sgt. Felton, myself and David Washington.

Q Approximately how long did the oral statement take?

A Approximately two and a half hours; in that time period.

Q Sir, using any notes that you might have taken, if necessary to refresh your recollection, would you please tell the Court what you or Sgt. Felton might have said to the defendant or the defendant might have said to you during the taking of the oral statement at the homicide office on October 1, 1976?

A Well, again we explained--I was about to explain his constitutional

rights---

Q After explaining his constitutional rights, get into the substance of the conversation concerning Frank Vincent Meli's murder.

A We started out by saying--I told you him, I said: "David, let's start from the very beginning." I said: "Let me ask you the questions. You go ahead and answer them the best you can." I asked him if he knew a Frank Meli. Yes, he did.

How did you meet this man? He said he met him through the newspaper article. He was looking in the want ads of the classified section. He was looking for a car to buy. He said he had formulated a plan in his mind that he would call somebody up, tell them that he wanted to buy the car. At that time he would proceed to where he would meet him at and he had formulated the idea that he would

kidnap, take the legal papers from the car, hold the person until he could sell the car and get the money.

MR. TUNKEY: Judge, may I voir dire?

THE COURT: As relates to what?

MR. TUNKEY: As to whether or not that which he is now beginning to testify to is contained within the written statement and if so I would say that there is no need to go through or go forward with this man's testimony other than for any additional things not covered in the written statement.

THE COURT: Are there things, any of your testimony that might not be reflected in the written statement?

THE WITNESS: There are two or three items in there, Your Honor, that I failed to ask in the formal statement.

THE COURT: I think for the purpose of continuity, Counsel, I will do the

same as the other two statements. Go ahead.

q [By Mr. Adorno] You may continue your answer.

A He wanted to state he found it in a newspaper in the Miami Herald that an individual had, he says, a '73 Camaro for sale. He was asking a price of \$3600. He called. He found out it was a man by the name of Frank Meli and during the conversation with him on three different occasions on Monday, which would be the 27th of September, he had talked Mr. Meli into meeting him Tuesday at approximately one p.m. He had three conversations with him on Monday. At one point he seemed that he was very concerned, that he was going to buy the car and if anybody else was going to buy the car he would give a deposit in order for Frank Meli to hold

the car. Tuesday he called again, the same number, and said he didn't talk to Frank Meli but to somebody else who he thought was his brother. He was confirming the meeting that was to take place at 27th Avenue and 79th Street at Sears and Roebuck auto supply dealer, which was supposed to take place at one o'clock.

The party that he was talking to on the phone said that Frank Meli would be en route there and he had nothing to worry about. Approximately 12:30, one o'clock, he said an individual did arrive in a Camaro. He introduced himself as Dave and the individual in the car introduced himself as Frank. He then began to look at the car, asked if he could test-drive the car. He took the car, started to drive around the area. He said he was satisfied with the car and started heading in the direction of his home which was

6520 N.W. 29th Avenue. After he acknowledged to him that he was going to buy the car, he said he would have to go to his house to get the money. He arrived at the house, parked in front, and he asked Meli to come inside. Meli said no. He came back with the statement that this was a bad neighborhood. "I'm not going to bring that much money out because somebody is liable to knock you in the head and take it away," and he convinced Meli to come into the house with him. As they got inside the house, he had placed a knife underneath a towel at the doorway there prior to him leaving the house that day.

He had Mr. Meli in front of him and Mr. Meli got inside the house. He produced the knife, grabbed Mr. Meli by the back of the collar, placed the knife

to his side and placed him in a chair that was in the center of the room there. He said Mr. Meli at this point said "Just take my car, just take my car." He took him to the back bedroom which was in the southwest quadrant of the house where he tied him up. Prior to getting back there, he said that his brother, Nathaniel Taylor, and another individual known to him as Johnny Mills was in the living room and they were waiting there for him. Prior to tying him up they removed sixty-five dollars from his pants pockets. He twenty-five himself, Mr. Washington, and he gave twenty to his brother and twenty to this other individual by the name of Mills.

He got into the back bedroom where Meli was tied up on the bed in a spreadeagle fashion. He then began to ask him where the papers were for the car.

Mr. Meli told him they were located in a shoebox within the car.

He went back outside and found the shoebox. He did find the papers, which were a title and a registration. Mr. Meli's personal identification--he went through the wallet, took the personal identification that didn't contain any pictures on it which were a voter's registration card and he said two or three other pieces of identification, where he took out the word "caucasian" and "white" and put in, inserted the word "black" or "B".

He told Mr. Mills and Mr. Taylor to stay at the house to watch Mr. Meli. He then left in the red Camaro and began to go to different car lots. I remember one lot was Luby Chevrolet where he had a little bit of difficulty showing the car off. He felt that something was

going wrong. He left there before the man came back outside after they were trying to make a deal. He got to the first car lot, didn't know how to open the hood, and the owner of that car lot became suspicious. He left and he started going through the car to get familiar with it and then returned to several different car lots where they began asking questions about his identification. Finally he arrived at Tally Embry Ford. He met a man there by the name of Rick. He said there was about five or ten minutes of negotiations and this Rick he would buy the car for \$2600, which Mr. Washington agreed to.

He wrote a check out to him in the name of Deloris LoProto who was Mr. Meli's mother. After he showed the identification there, he said he had very little trouble at Tally Embry Ford. He

told him he could cash the check down the street or the bank downtown which was the Southeast First National Bank. They suggested going to the bank downtown for easier purposes of cashing a check. So he took a taxi home, got back to the house. He told the other two individuals who were at the house guarding Mr. Meli that he had got the check, that it was in the name of Deloris LoProto. He approached Frank Meli and told Mr. Meli about the check and Mr. Meli said he would sign or endorse the check being that he has endorsed his mother's name before. The three of them were inside the room. There was a gun present, a knife present. He is not sure who had the gun or who had the knife. But he freed his right hand, he signed and endorsed the check, and Mr. Washington left the house, went to the bank and arrived

there ten minutes to three, approximately and produced the check and identification at the checking account cashier and she refused to cash it for him. He stated he left the bank and called Tally Embry Ford.

When he called there, he told them he was having trouble cashing the check and that if he had any more trouble he would like his car back or he would like the money. Tally Embry Ford told him that there would be no problem with him cashing the check, that he would have to return to Tally Embry Ford the next morning in order for him to cash the check, which he agreed to.

Instead, he came home. That was tuesday evening. The three of them were at the house together. He asked Mr. Meli if he wanted something to eat which he replied that he would like a

chicken sandwich or a sausage sandwich or soda. He sent Mr. Mills and Mr. Taylor out to the store. Prior to them leaving the house, Mr. Meli asked if he could be released from the position he was in which was a spread-eagle position on the bed, and be made more comfortable, but Mr. Washington complied to this by tying his hands in front of him. He stated that Mills and Taylor returned with the sandwiches. Mr. Meli didn't eat much. He drank quite a bit of water and soda and they continued to talk the rest of the evening while they were listening to the fight that was on the radio at that time.

He indicated to Mr. Meli that if anything would go wrong, he would have to kill him. Mr. Meli became visibly upset and he said, then he says that Mr. Meli stated that if he contacted his

brother it would insure him of getting of getting the money. So at approximately twelve or one o'clock he himself walked up to the phone with Mr. Meli as Mr. Meli had his hands tied in front of him and he had a knife with him and that was placed in Mr. Meli's back. He called Mr. Meli's brother and told him that they weren't hurting him, that they were treating him good and he had something to say to him.

Mr. Meli got on the phone and began to talk to his brother and he said, "Do what these guys want you to do. They mean business." He again got on the phone, told Mr. Meli's brother that he wanted \$2700 deposited at the Royal Castle at 27th Avenue and Northwest 79th Street the following day at three p.m. He was to take a cab to this location, put the money in a brown bag. He was to go by the Dempsey Dumpster and place the money on the ground,

walk away, and go to the parking lot and wait thirty minutes where his brother would be released to him.

They again returned home when they got done with this conversation on the phone and he said Mr. Meli was tied up again in a spreadeagle fashion. He said this time he didn't need the help of Mr. Taylor or Mr. Mills. He said he tied his feet first and then untied his hands and tied one hand at a time in each position, again in a spreadeagle fashion. He said Mr. Meli slept very little. He locked the door and he slept on the floor. He said his brother and Mr. Mills were sleeping in the other bedroom with their girl friend and the baby and he slept very little himself that night.

The next morning he went to Tally Embry Ford and he met the used car

manager there. He explained the difficulty he was having with the check cashing at which time he told him that his mother, Deloris LoProto, was a cripple and was in a wheelchair and it would be impractical for her to appear at a bank. He convinced these people that he was in fact Frank Meli and that Deloris LoProto was his mother.

They called the bank and made arrangements with a man, Bill Willis, at the bank to cash a check from Tally Embry Ford. He returned to the bank and contacted Mr. Willis, at the bank, and Willis again questioned the identification and he says that this time that he felt he was on the fourth floor of the bank he had to go all the way through with it, and he then began plotting, conning Mr. Willis to believe that he was Mr. Meli. He showed him identification, had a small

argument with him, and finally Mr. Willis did give him the \$2600.

The money was wrapped, the \$2,000 and the \$500 and \$100 was single. He took a cab back to the house and got back there and Mr. Washington and Mr. Mills were there, along with Mr. Taylor. They divided the money. Mr. Mills received \$200 of the money along with Mr. Taylor. He said he had sneaked back and gave Mr. Taylor another thirty because he was his brother. They were both very happy and excited about the money, and they both left and went back into the room and again started talking with Mr. Meli.

He told him that he had cashed the check but that he was going to go through with the other pickup of the money. He said he left the room, stayed

outside for approximately thirty-five minutes to an hour, came back into the room. As he entered the room, he had a knife with him as he always had when he went to that room. He said Mr. Meli's right hand had broken free from the extension cord he had him tied with. They began wrestling and Mr. Meli is a very big man and as he began to choke him or something he thought Mr. Meli could break loose so he began to stab him. He said he stabbed him four times in the right-hand side of the chest. He said after stabbing him he began to yell, and began to moan quite loudly.

He said he placed a pillow over his head so he wouldn't be heard and [Meli] started to recite the Lord's Prayer and recited that three or four times until finally he did stop. At this point he said Mr. Washington was outside or was

present in the house, and he requested Mr. Washington to go outside and see if he could hear the screams.

Q Excuse me. You mean Mr. Washington or Mr. Taylor?

A I'm sorry, Mr. Taylor. Mr. Taylor did go outside, he said, came back inside and said he didn't hear any further screaming. Mr. Taylor then left. Mr. Washington then secured Mr. Meli again, put him in a spreadeagle fashion, put a gag to his mouth, leaving him there in the room. He said he closed and locked the door, went outside, stayed outside for a short time, went to 27th Avenue and 79th Street where he was going to try to pick up the other money from his brother that was supposed to be deposited there. During this line of questioning I asked him if he was concerned with whether he had been identified at the bank when he

cashed the check or at Tally Embry Ford when he sold the car.

He said he wore a wig and a hat at the time and he felt wouldn't be able to be identified. He said when he finally got to 27th Avenue and 79th Street, he got there approximately an hour before the drop-off was supposed to be made, which was two o'clock, and he observed a cab at three o'clock arrive at the Royal Castle, saw a white male get out of the cab, go to the Dempsey Dumpster, place a brown bag there and begin to walk away and return to the brown bag. He said this got him upset because he thought he was possibly being set up. He saw the cab driver leave, make a phone call, and he felt this was possibly a policeman.

He then began to watch the area and saw two or three individuals that he

thought there was something wrong with. He wasn't quite sure. He went to the Burger King, which is a short distance from the 79th Street area.

While he was at the Burger King, he walked by a car and there were two policemen in the car that had a gun between them, and he was confident that the police were there and before he went to the Royal Castle, he said, he had put another set of clothing on so in the event he did take the money and begin to run he would be able to stop some place, change clothing and hope that he would elude the police if they were chasing him.

He finally made a determination that he wasn't going to take the chance of picking the money up at the Royal Castle. He said he went to the Opa-Locka area to visit a friend whom he wouldn't disclose at this time. He stayed in the

Opa-Locka area until 9:30, ten o'clock, at night, took a bus back to his home, arrived home, went inside the bedroom and saw that Frank Meli was deceased.

He began to wonder how he was going to dispose of the body. He felt if he tried to put the body in the car he was probably going to get caught. So he figured the alternative would be to bury the body in the backyard. He went outside to dig a hole. He saw a gentleman across the street by the name of Mr. Troupe observing him, walked across to the street, talked to Mr. Troupe, told Mr. Troupe that he was digging a drainage ditch that his stepfather had wanted to put there, sewer ditch, convinced Mr. Troupe there was nothing wrong, returned back to the house, finished digging the hole approximately four and a half feet deep, and went into the bedroom, cut the cord that was

securing Mr. Meli. Mr. Meli, he said, was on a blue blanket or bedspread. He dragged him outside by the feet and he said he had difficulty dragging him outside because rigor mortis had set in already. He got to the hole, placed Mr. Meli into the hole. He couldn't remember just if he was face up or face down but he does remember his head toward the north direction, that he had placed a towel around his neck and that there should be cords around his hands. As he was burying him, his brother, Nathaniel Taylor, came back to the house and he said Mr. Taylor asked him what he was doing. He told him that Frank Meli had died, at which time Mr. Taylor began helping bury Mr. Meli.

He said there were two knives involved, one was a butcher knife, six inch blade and eleven inches over-all.

This is the knife he used to stab him with. He took this knife and broke it in little pieces threw it out throughout the neighborhood. The other knife, Mr. Taylor had. He didn't what happened to it. He went inside the house, began to clean up the room where the blood was, and there was a mattress, he said, different articles in there, took this mattress to an area which is near his house and disposed of it. He described this as saying go down to the end of the block, and---

Q Were those, the mattress, subsequently discovered by police officers near that area?

A Yes, sir.

Q You may continue.

A He went back to the room, cleaned up the room, used Clorox and bleach and what not to make sure there was nothing

there, and then he retired for the evening.

He got up the next day and he went out, at which time he bought the motorcycle for eleven hundred dollars. I asked him what he did with the rest of the money and he said he went to the Castaways, did quite a bit of drinking over there, went to the dog track. He spent quite a bit of money at the dog track; and had given \$200 to Mills and \$230 to Taylor, had given some money to his wife and said he didn't have any money left over whatsoever.

At one point, I asked him or said if everything went right in this entire deal, what would he have done to Frank Meli, and he indicated he would have to kill him. He said he didn't originally start that he was going to kill him. He felt confident he would have to

kill him. He said he didn't originally start that he was going to kill him. He said he didn't originally start that he was going to kill him, but he felt confident, and I believe used the phrase, "ninety-nine to one I would kill him."

Q After the conclusion of the verbal statement, did you have an occasion to take a written statement?

A Yes, sir.

Q Was that written statement transcribed?

A Yes, it was.

Q Did you give the defendant the opportunity to read that statement and make any corrections as to the truth or as to what occurred between September 27 and October 1, 1976?

A yes, we did.

Q On that day during your conversation to your knowledge, did the

defendant at that time admit his guilt in any other homicides except the one concerning Frank Vincent Meli?

A No, sir.

MR. ADORNO: Nothing further.

THE COURT: What is the number of that statement, please, that is being admitted?

THE CLERK: Twelve, Your Honor.

MR. TUNKEY: No questions.

MR. ADORNO: Would you ask Harry Coleman to step in, please?

[Witness excused]

MR. TUNKEY: Your Honor, may I inquire as to the purpose of Harry Coleman's testimony? I know him as a chemist from the crime laboratory.

MR. ADORNO: This is a different one. This is, Harry Bill Coleman. He is not with that office at all.

Thereupon:

HARRY BILL COLEMAN

was called as a witness on behalf of the plaintiff and, having been duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. ADORNO:

Q Would you state your name, please?

A Harry Coleman.

Q Where are you presently living?

A Presently I am on the road traveling.

Q Did you reside here in Miami, Dade County, Florida, back on September 30, 1976?

A Yes, I did.

Q On that date, which was Thursday, did you have occasion to come in contact with David Leroy Washington?

A Yes, I did.

Q Do you see him in the courtroom?

A Yes, I do.

Q Point him out for me, please.

A The gentleman right there.

Q Indicating, for the record, the defendant, David Leroy Washington.

What were the circumstances when you came into contact with the defendant on Thursday, September 30, 1976?

A He was responding to an ad I had for a motorcycle that I had for sale. He wanted me to bring the bike over to his house and at that time he said if he liked the motorbike he would purchase it. I declined that and said I would pick him up because he said he had no transportation but really was interested in the bike, and that he had cash to pay for it.

So, as a result of that, he gave

me his address. I went to his place. Upon getting there I recalled that I had some pictures of the bike, so I showed him the pictures from the briefcase that I had, and at that time he said that he really liked the bike, and that he really wanted the bike, and took out eleven hundred dollars, showed it to me and said that's what he had, and placed it on the back of the truck.

Q Did he tell you why or for what reason he wanted to purchase the motorcycle?

A Yes, he did. On the way to my place to show him the bike we started talking and he said he had had a bike prior to that but his brother had wrecked it, that he really wanted a bike, a chopped up custom bike, so that he really looked macho riding around, and going on

Collins Avenue driving a new bike and having people look at him and admire his bike and admire him on the bike.

Q What is meant by a "chopped up motorcycle"?

A Well, bikes come off the factory like cars, very custom, very standardized. You chop the bike, customize it, put a lot of chrome and money into it. I got the bike customized to a certain degree and he was going to further customize the bike, and get it chopped up, put customized paint on it, put his personal touch on it.

Q Did you then go back to your house and sell him the motorcycle?

A Yes, I did.

MR. TUNKEY: I will object to this. It is irrelevant and immaterial. It obviously comes at a time after the homicide

I cannot imagine---

THE COURT: Overruled, Counsel.

Q [By Mr. Adorno] What happened after you arrived back at your place?

A He immediately, without even starting the bike, fell in love with it, said he would take it; there was no question. He felt it was super and suited his purposes well.

Q What did you do after that?

A Well, we talked about the money and all, and settled on the price, and then we went to the bank, transferred the title or opened the title rather, and then we went to the auto agency and at that point transferred the tag. Now, he didn't want to go there and he didn't have the money to transfer the tag. He wanted to just leave it open and said he would take care of it when he got back home. But I loaned him the ten dollars

for the tag which he said he would reimburse me.

Q Did you then go to the tag agency?

A Yes. We went to the tag agency and we took care of all the things there and I paid the ten dollars for the transfer of the title and the tag.

Q Sir, then where did you go?

A Then we proceeded back to my house. I showed him a few things about the bike and things that had been done to it to customize it and then drove off.

Q Let me show you State's Exhibit No. 11 and ask you if you can recognize the motorcycle that is shown in there?

A Yes, I can.

Q Whose motorcycle, or where had you seen that motorcycle before?

A This is the motorcycle that was

mine that I sold to Washington.

MR. ADORNO: Thank you, nothing further.

MR. TUNKEY: No questions.

[Witness excused]

MR. ADORNO: Here is the rights that we can incorporate with the Meli confession.

THE COURT: I believe that is number twelve, yes.

MR. ADORNO: I will recall Dr. Wright.

Again, as the other two protocols, I will submit a copy of the protocol, of the autopsy of Frank Vincent Meli.

THE COURT: Make it the next exhibit, please.

MR. ADORNO: Same stipulation as to the doctor's qualifications as forensic---

MR. TUNKEY: Yes, sir.

[Thereupon, the document referred to was marked State's Exhibit No. 13, and received in evidence.]

Thereupon:

RONALD KEITH WRIGHT

was recalled as a witness on behalf of the plaintiff and, having been previously sworn, was examined and testified further as follows:

DIRECT EXAMINATION

BY ADORNO:

Q Dr. Wright, did you have occasion on October 1st, 1976, to go to 6520 Northwest 29th Avenue?

A Yes, I did.

Q And who summoned you there?

A The complaint desk, Public Safety Department.

Q Sir, what, if anything, did you do at that location?

A Ended up digging up the body of Frank Meli.

Q Sir, would you describe for the Court what you observed when you were finally able to dig down and find Frank Vincent Meli?

A At a depth of approximately two feet, six inches, behind the house, we found a blanket, blue in color, which appeared to be covering a body of a person who had died.

We carefully excavated at that point not to cause any injuries to the body, and removed the body from the scene.

Q Doctor, did you yourself take photographs that would depict that particular scent?

A Yes, I did.

Q Do you have that with you?

A Yes, I do.

Q Would you hand that to the Clerk and I will ask the Clerk to mark it for identification.

THE COURT: Any objection to it?

MR. TUNKEY: Same objection as previously, immaterial and irrelevant.

THE COURT: They will be overruled. Mark them as a composite, A, B, C, please.

[Thereupon, the photographs referred to were marked State's Exhibit No. 14, composite, and received in evidence.]

Q [By Mr. Adorno] Doctor, as we previously did, would you explain those photographs to the Court and the process that they show as you were digging up the body?

A All right. State's Exhibit 14-C shows the backyard just to the east of what appears to have been a clothesline support, the area which the excavation

was carried out. This area had external evidence of previous excavation insofar as there was a great deal of disruption at that point and pieces of grass had been pulled out.

Q Sir, go ahead.

A Again, 14-B shows the body as it was first being uncovered. Here is the blanket which covered the body and as you can see from the officer's leg, it measured two feet, six inches, to the top of the hip, and here is the body as uncovered in the grave itself, that being 14-A. That's the correct orientation. That shows the body as it was uncovered and the blanket having been pulled away.

Q Doctor, under your supervision was the body removed from the grave and transported to the medical examiner's office?

A Yes, it was.

Q Did you have occasion to perform an autopsy on Frank Vincent Meli?

A Yes, I did.

Q Prior to performing the autopsy, did you notice anything about his neck, hands or feet?

A Yes. About his neck was a terrycloth towel which was knotted about his head and also a length of brown extension cord, two-wire variety, about his right hand. There was ligature composed of the extension cord, appeared to be the same extension cord, again a brown two-wire extension cord, sixteen-gauge wire, about the ankle.

There was a section of bedsheet which had been torn and was present about the ankle. In addition to that about both arms there were areas of contusions or bleeding underneath the skin, bruising

underneath the skin in a linear pattern suggestive of, again, from the presence of the ligature, that the hands had been tied and were forced. There had been an attempt to free, he had attempted to free himself, thus bruising his hands in this lateral pattern.

Q Would you tell the Court what the results of your autopsy were?

A The results of the autopsy revealed that Frank Vincent Meli died as a result of multiple of stab wounds. There was total of eleven stab wounds to the body altogether.

Q Doctor, did you take pictures depicting those particular stab wounds?

A Yes, I did.

Q Do you have those pictures with you?

A Yes, I do.

Q Would you please hand them to me, please?

MR. TUNKEY: Judge, these are certainly repetitive to those pictures that were already introduced with respect to this case. I can conceive of no purpose for the introduction of these photos.

THE COURT: I haven't seen them.

MR. TUNKEY: I know, but I have to make my objection. Especially considering the rather gruesome nature of color photographs.

THE COURT: All right, sir. Your objection is overruled.

[Thereupon, the photographs referred to were marked State's Exhibit No. 15, composite, and received in evidence.]

Q [By Mr. Adorno] Doctor, let me show you State's Exhibit No. 15, composite,

A through I, and again by referring to the number and letter, would you describe to the Court the wounds that you found while performing the autopsy on Frank Vincent Meli?

A Photographs G and H show the ligature about the neck, being the extension cord, and the terrycloth towel about the neck.

F, B and C are photographs taken specifically to depict the absence of any defense wounds on the hands or arms of the deceased, Frank Meli.

Photograph I shows the stab wounds of the chest. There are five stab wounds in the right chest. There are five stab wounds in the left chest, and there is one stab wound of the upper bicep on the left-hand side of the body.

Photographs A, B and E, still

of composite 15, are taken to show the vital reaction to all these stab wounds. The areas of hemorrhage depicted in the opened right chest of photograph E, the external shot of the chest showing hemorrhage in photograph B and the external or just beneath the skin photographed in A, demonstrate that there was bleeding associated with all eleven of the stab wounds.

In other words, while each of these stab wounds was delivered, the deceased had a blood pressure capable of producing hemorrhage into these wounds.

Q Doctor, the stab wound, eleven stab wounds that you found on Frank Vincent Meli, would any of them have caused instantaneous or rather quick demise on behalf of the victim?

A The stab wound which in the protocol is described as stab wound F,

the stab wound which is located in the left chest just to the left of the mid-line, is a wound which would cause death in a matter of seconds, perhaps as long as a minute or so, because this stab wound was of the heart and introduced a condition which is known as cardiac tamponade, which is a condition in which there is bleeding into the sac around the heart which then prevents the heart from pumping.

Q Based on your examination, both externally and internally, were you able to determine where in the sequence of the stab wounds this particular wound to the heart occurred?

MR. TUNKEY: Objection, Your Honor. This is certainly a hypothetical question.

THE COURT: If you can answer.

MR. TUNKEY: I would like to make

sure that the answer will be phrased, Your Honor, to a reasonable scientific certainty, not some probability or guesswork.

THE COURT: Reasonable medical certainty, please, Doctor.

A I cannot answer that question without supplying another factor into the hypothetical.

Q [By Mr. Adorno] All right, sir, what would that factor be?

A It would be possible if all the wounds were delivered, all the ten additional wounds after the one which was so rapidly fatal, some seconds, perhaps as long as a minute, it would be possible to deliver all of the wounds within that period of time. The thing which I can say was that he was alive during the entire, every one of the stab wounds

delivered.

Q What do you have that you can base that result on?

A Again, the presence of the hemorrhage in every one of the wounds means that he was alive and indeed insofar as that hemorrhage indicates that he had a blood pressure. It indicates that he was conscious during that period time when every one of those eleven stab wounds was inflicted.

Q Doctor, did you notice anything unusual about the eleven stab wounds you found on Frank Vincent Meli?

A Yes.

Q What was that?

A The stab wounds in the left chest are all parallel. The stab wounds in the right chest are all parallel to the ones in the right chest, having some right to left orientation. The stab

wound in the left bicep is parallel with the stab wounds in the left chest. This is highly unusual in the stab wounds for it indeed indicates that the deceased did not change his relationship to the knife during the point in time he was being stabbed.

Q Doctor, did you have occasion to go inside the house?

A No, I did not.

Q Doctor, did you find any evidence that the victim in any way struggled at the time that he was being stabbed to death?

A There was no evidence of any kind of defensive reaction. There was no evidence of moving the body at any time during the stab wounds. The other factor of importance here in regard to motion of the body is that ordinarily in stabbings,

stab wounds tend to assume a "V" shape on the skin due to the fact that the person moves and the track that stab wound takes coming out is slightly different than the track going in, giving a double wound. None of these wounds showed that.

Q Doctor, let me show you what has already been received in evidence as State's Exhibit, composite, 3-B and 3-A. Can you demonstrate for the Court how those stab wounds were different from the ones you found on Frank Vincent Meli, if they will assist you at all with respect to the knife being withdrawn from the body?

A The stab wound here as depicted in 3-B shows this two-component, almost what appears to be a double-stab, and the reason for this is generally a movement of the body, of the person when the knife is being withdrawn. Again, to show the internal relationship, obviously these

pictures do not show the inside.

Q Doctor, did you find anything in your examination that would have been consistent with the victim's hands being tied either behind him or spreadeagled at the time he was stabbed to death?

THE COURT: Is the term "consistent" or "inconsistent"?

Q [By Mr. Adorno] Did you find anything that would be consistent with the victim either having his hands tied behind his back or hands tied spread-eagled and otherwise incapacitated at the time he was stabbed to death?

A Yes.

Q What were those items?

A Number one, there was still present about the hands a ligature at the time when I examined the body. They were at that time not attached to both hands.

Number two, there was evidence that, of bruising to the skin with Frank Meli attempting to free himself from these bonds with sufficient force against them that it had caused bruising to the skin.

Number three, there was the presence of the wound here to the left bicep. Once hands are tied behind the back, this area is less than one inch from the closest stab wound of the left chest. All of these stab wounds of the left chest are clustered here along the left side. This wound is exactly parallel when the arm is behind the back in the position I indicate with the stab wounds of the chest. And, finally, the last thing being, two more things, the parallel nature of these wounds, first of all the ones to the chest, left chest being straight down; the ones to the right chest

having a slight left to right orientation on the body of Frank Meli measured from his right to left and the lack of this double "V" shaped wound, externally, all point to the fact that he was incapacitated.

Q What was the cause of death of Frank Vincent Meli?

A Multiple stab wounds.

Q Did he basically bleed to death?

A Yes.

MR. ADORNO: Nothing further.

THE COURT: Any cross?

MR. TUNKEY: Nothing.

MR. ADORNO: At this time, the State has not further witnesses to present. I will have marked for identification the defendant's rap sheet. I will ask that be marked.

MR. TUNKEY: I object, Your Honor. I

most certainly object.

THE COURT: I shall sustain the objection as to the rap sheet.

MR. ADORNO: The only other thing that I want to mention is that I would like the Court to take notice of the plea as to the battery on the police officer that occurred in this court on October 13, 1976. Other than that the State has no further evidence to present.

THE COURT; Do you want a few minutes before you put your case on?

MR. TUNKEY: Your Honor, I would like to amplify that I object to Mr. Adorno's comment that he wants to introduce a so-called rap sheet and would move at this time to in effect enter an order of mistrial insofar as these proceedings are concerned. I believe that the State's comments are so inherently prejudicial

that the Court could not fairly decide the issues before it. It certainly goes to one of the factors to be determined by the Court in passing sentence.

THE COURT: There is an appropriate manner for establishing other convictions and this is not it, and accordingly I granted the motion. It need not be handled in any mistrial. I don't find that to be an aggravating circumstance based upon what they brought in. Do you want some time before you put on your case?

MR. TUNKEY: I would like to have perhaps ten or fifteen minutes, Your Honor.

THE COURT: Twenty-five minutes after three.

We will adjourn at this time until then.

MR. TUNKEY: May I speak with Mr. Washington in the jury room, Your Honor?

THE COURT: Yes, sir.

[Thereupon, a recess was taken,
after which the following proceedings were had:]

THE COURT: All right, gentlemen,
let's go.

MR. TUNKEY: Judge, we will adopt
the testimony of last Wednesday, given
at the time of the plea. We will offer
no additional testimony at this time.

THE COURT: All right, sir. Does
the State have a memorandum that it wanted
me to consider?

MR. ADORNO: Yes, Your Honor.

THE COURT: I am not opposed to
hearing brief argument by counsel. Of
course, the facts are recent in mind, but
perhaps you might want to argue some
questions of law, either of you, and if so
I will be more than pleased to give you

some brief period of time for that purpose.

MR. ADORNO: Mr. Gerstein was going to make that argument to the Court and he has not come back into the courtroom. I beg the Court's indulgence for a couple more minutes. May I go outside and see if I can find him?

THE COURT: Yes, sir. The same rule applies for him as it does for anybody else.

I am advised, Mr. Gerstein, that you wanted to make some observations relative to the closing. You weren't here but as I advised counsel, I am relatively familiar now with the facts of this case, but I will be more than glad to hear from both sides as to questions of law or interpretation which you would like to make.

MR. GERSTEIN: Does Your Honor desire

to hear from the State first?

THE COURT: Yes, Sir.

MR. GERSTEIN: If Your Honor please, this is a case in which capital punishment, the death penalty, is as warranted as any factual situation that will ever appear before Your Honor and is warranted under the statute setting aggravated circumstances as any situation that will ever appear before Your Honor.

This defendant has left in his wake a trail of human destruction involving three dead persons, a woman who is partially blinded, another woman who is in a coma and who, according to the medical testimony, will be nothing more than a vegetable. He has left a series of people shot and stabbed while he carried out murder and robbery and kidnapping.

When the People of the State of

Florida, through their elected representatives, established the death penalty, it certainly was with this kind of crime in mind. Nothing occurs to me that would adequately punish this series of events other than the death penalty.

In recent days, we have seen the media give a great a deal of attention to the plight of persons who face the death penalty. We have seen relatively little attention given to the plight of victims and their families. It is especially true in this situation.

I was especially moved by the circumstances involving the final victim, who was a young student, some twenty years of age, who was working his way through college by holding down two jobs, who had planned to become a tax lawyer, who was helping to support his family, who had been left without a father because

his father was killed in the service of his country overseas.

He became the last victim in a chain of horror stories that has rarely been exceeded in this community and he became the last victim as a result of the defendant's total greed.

There is a portion of the confession in connection with the stabbing and killing of Frank Meli that is horrendous. The question is posed to the defendant, "When you say you put a pillow over his face, what for?" The answer is "He--" referring to Meli, "--when we got into it, he just start hollering when I stabbed him. When I stabbed him, that's when he started hollering. Then he just kept on hollering. Then when he stopped hollering, he just start moaning real loud. Then he start saying the Lord's Prayer, Said it three or four times, over

and over." It comes from page 15 and 16 of the defendant's statement.

It seems to me, Your Honor, that of the aggravating circumstances set out in the statute, six of the eight aggravating circumstances would apply to the final homicide, to the one from which that statement in the confession is taken. The defendant himself concedes through counsel that two of the aggravating circumstances apply to all of them; that's conceded; that is that all three killings were during the commission of robberies or kidnapping, that they were for money. We respectfully submit that Meli was killed to keep him from identifying his assailants, to frustrate the enforcement of the law, since there would be no identity; that it was especially cruel and heinous and atrocious. I have examined the mitigating

circumstances and I don't find one within the statute that would warrant any sympathy, any consideration, any leniency, any mercy from Your Honor or from anyone else.

I don't know what we can do stop this kind of thing in this community but I do know that the people of this State have enacted a law that calls for capital punishment, the death penalty, in certain instances and in certain crimes. I do know that it is high time that we had some of the same concern for the victims of crime and their families that we continually exhibit for defendants in this State and in this country. No one is going to compensate the victim of this crime or his family and there is little that we can do except to see to it that there is some justice and we can do that

by seeing to it that the death penalty is assessed in this case.

THE COURT: Mr. Tunkey?

MR. TUNKEY: Your Honor, just briefly.

Obviously, as set forth in the memorandum which I have provided the Court, I disagree with Mr. Gerstein's assessment as to the balance between the aggravated and the mitigating factors. However, I believe that without even getting to that determination that this Court has before it a defendant who, yes, by his own admission, has committed a series of crimes which by their nature are the most serious proscribed by the laws of the State. He has confessed, not through any coy, cunning design to avoid the imposition of the death penalty, but rather knowing full well that this Court could, in fact, impose that penalty.

I suggest to this Court that this Court has an alternative in this instance without resorting to the ultimate penalty which man can impose and that is to sentence this defendant to a term of three consecutive life sentences in the state penitentiary, each of which to run with no parole for twenty-five years, thus insuring that for a minimum term of 75 years--the defendant at that point would then be, if he were to be living, 101 years old--would then have further sentences that could be imposed as to the lesser counts contained in the indictments and/or the information to which he has already entered a plea of guilty before this Court.

Neither philosophically, morally or religiously do I agree with the concept of the death penalty. I do not believe

that that is what is important here. Mr. Gerstein says that the people of this state have voted for the death penalty, i.e., through their legislators. I do not know that the people of this state have ever voted for the imposition of the death penalty.

I think the Court will recall David Washington when he testified on Wednesday--I cannot tell the Court and I don't know that the Court knows itself what possesses any person, whether it is David Washington or anybody else, to commit a series of acts like this, and yet the Court knows that he is a living, breathing human being with some degree of intelligence, with the ability to express himself and even though, obviously, the acts which he committed were atrocious or terrible he also possess somewhere within him a spark which is good, which is decent.

There are obviously others in the past who have come before judges about to be sentenced for crimes as serious, perhaps more serious, who have been given the opportunity one way or another to live out their lives, whether it be in prison or after being in prison and back in society, who have been productive members of society, whether that be in a prison or elsewhere. I suggest to the Court that David Washington is not different when you go back and talk about a Leopold and Loeb case or Birdman of Alcatraz case, somewhere within this man, I suggest to this Court, there is a spark which deserves the chance to expire naturally.

Whatever punishment he is going to receive in the hereafter, he is going to receive, whether this Court gives him the death penalty or not.

I simply ask this Court not to

interpose the judgement of the hereafter but to let this defendant serve out his natural life in prison. The people of the state can be assured that he is no longer a threat. The people of the state can be assured that David Washington is not going to be on the streets; that David Washington is not going to commit crimes. On the other hand, the people of the state do not have to have the moral judgment or the religious judgment on their hands of having taken a human life.

I ask this Court from the bottom of my heart and on behalf of David Washington who I have represented for some months now to impose consecutive sentences of life in the state penitentiary with no parole for twenty-five years as to each of those consecutive sentences.

MR. GERSTEIN: May I in rebuttal

respond very briefly?

THE COURT: Yes, sir.

MR. TUNKEY: Your Honor, I am going to object.

THE COURT: I will hear it. If you want to make further comment, Mr. Tunkey, I will hear you.

MR. GERSTEIN: Mr. Tunkey says that the People of State of Florida have never voted for capital punishment. I don't know how the people of this state establish laws other than through their elected representatives, since we do not submit our laws to public referendum before they are enacted. They are enacted through elected representatives.

I won't attempt to play God and say whether or not there is a spark of anything that's decent within this defendant, save to express my firm conviction to Your HONor that if there is a spark of

anything that is decent within him, he has not exhibited it at any time in any of the things that have been related to this Court. There is nothing of human decency that was exhibited at any time by him. And further, I have listened carefully to Mr. Tunkey as he speaks of the hopes and aspirations of this defendant, and I reiterate to Your Honor what about the hopes and the aspirations of the victims and their families? I don't know what the future will hold. I don't know whether the law that says this defendant cannot be paroled within 25 years will always be the law in this state. I don't know what this defendant will do in prison. But I do know that the people have provided one form of punishment that is the appropriate punishment, and the only appropriate punishment for these crimes.

THE COURT: Anything else, Mr. Tunkey?

MR. TUNKEY: No, Your Honor. I have made my comment.

THE COURT: The Court has before it the four different cases, all of which were pled by Mr. Washington, I believe it was last Wednesday. The Court's feeling relative to the other counts that are contained, and I will ask Mr. Washington at this time if he would please rise for the purpose of sentencing with his counsel, as relates to those counts that are contained, Miss Clerk, in the information and the three indictments that have been filed, other than that of first degree murder, it is the judgment of the Court that his plea is acceptable and he would be exposed to the maximum which could be assigned by the statutes for those other crimes that have been involved,

other than the first degree murder counts.

Now, we have listened to the testimony today and, of course, to Mr. Washington's discussion with us last week, and counsel's questions to the one witness relative to the question of forgiveness which, of course, is not mine nor is it the victims' and whatever forgiveness Mr. Washington will receive he will receive it with his own maker based upon the confession and the opening of his heart that he has done last week.

I am a symbol of the law of this State and it is my responsibility under that authority to enter that judgment which I think is appropriately called for by the facts and the law, and I find that in this case that there are sufficient aggravating circumstances existing, in that there are not sufficient mitigating circumstances which would in any way overrule

those aggravating circumstances, and, accordingly, it is the sentence of the Court that the death penalty be imposed on each of the three cases to run consecutive for the purposes of appeal review; that Mr. Washington be taken into custody by the Department of Criminal Rehabilitation, and that such sentence be imposed as is appropriate, consistent with the law.

Now, of course, under Article V, Mr. Washington, Section III of the Florida Constitution, the Florida Supreme Court will directly hear whatever appeal there may be as to the findings of the Court concerning the sentence. I do not know whether or not there is presently pending a conflict with the Public Defender's Office. In the event that there still exists, of course, we will appoint Mr. Tunkey for the purpose of filing the

appellate procedures and if then he refuses, by appropriate motion, we will make such further appointment as is appropriate.

MR. TUNKEY: I will ask there be a joint appointment. First of all, I don't know whether or not the conflict still exists either, but I presume that it does since the Public Defender's office still represents Mills. However, I would ask if, in fact, that is the case, that the Court appoint Mr. Bruce Rogow as lead counsel for any appeal with respect to the sentence which the Court has just passed and that I be appointed co-counsel.

THE COURT: I am not familiar--it may be that I know Mr. Rogow, but it does not ring a bell, but if you would be good enough to bring him by, I would be glad to interview him and to make certain that

Mr. Washington's appellate rights have been protected.

I compliment all counsel for their attendance upon the Court and the preparation of their cases.

[Thereupon, the sentencing was concluded.]

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CERTIFICATE OF REPORTER

I HEREBY CERTIFY that the foregoing pages, numbered from 1 to and including 165, represent a true and correct transcription of my shorthand report of the sentencing in the above-styled case.

Dated at Miami, Florida, this 28th day of January, 1977.

Larry Gryniowski

EXHIBIT NO. 1

IN THE CIRCUIT COURT OF THE ELEVENTH
JUDICIAL CIRCUIT IN AND FOR
DADE COUNTY, CRIMINAL DIVISION
FLORIDA

THE STATE OF FLORIDA, :
Plaintiff, : CASE NO. 76-8300
76-9542
76-9543
vs. :
DAVID WASHINGTON, :
Defendant. :
: MEMORANDUM RE:
SENTENCING

THE DEFENDANT has tendered to the Court and the Court has accepted the Defendant's pleas of guilty to the Indictments styled in the above-styled cases.

Pursuant to the entry of said plea, and the waiver by the Defendant of a jury recommendation as to sentencing, the Court is the ultimate finder of fact as to the requirements of law which are set forth in Florida Statute 921.141.

Florida Statute 921.141(5) sets forth aggravating circumstances which may be considered by the Court in determining the penalty to be imposed upon the Defendant. It is the contention of counsel for the Defendant that subparagraphs a, b c, and g of Florida Statute 921-141(5) do not apply to any of the above-styled cases. Subparagraph c of this Statute may be said to be applicable to the facts alleged in the Indictment in case number 76-9543, but not to the facts alleged in either of the other two Indictments. Counsel must concede that subparagraphs d and f of said Statute appear to apply to each of the Indictments to which the Defendant has entered pleas of guilty. Lastly, as to aggravating circumstances, subparagraph h of Florida Statute 921.141(5) may conceivably be applicable to the facts alleged in support of the Indictment filed in case number

76-8300.

Florida Statute 921.141(6) provides that certain mitigating circumstances may exist to offset the aforementioned aggravating circumstances. Counsel will concede that subparagraphs c, d, e, and f do not appear applicable to the facts in any of the above-styled cases.

However, it is the contention of counsel for the Defendant that: a) the Defendant has no significant history of prior criminal activity; b) the Defendant was acting under the influence of extreme mental or emotional disturbance at the time that he committed the acts complained of in the above-styled cases, and; c) that the Defendant's age is such that a sentence of imprisonment for life in the State Penitentiary with no parole for anywhere between 25 and 75 years, depending upon

whether sentence is rendered in the above-styled causes are consecutive or concurrent, would both severely and adequately punish the Defendant for the crimes complained of and would insure society that the Defendant would not ever again become a threat to the community.

It is the position of counsel for the Defendant that the aforementioned aggravating and mitigating circumstances are nearly balanced, one against the other. However, it is felt that two additional factors should be considered by the court in its entry of sentence in these cases. The first of these is that the Defendant has at no time since his arrest attempted to escape justice. The Defendant initially surrendered to the police and immediately thereafter, confessed his culpability as to each of the allegations contained in all of the above-styled cases. The

Defendant did this both immediately subsequent to his arrest and has entered pleas of guilty to this Court and has freely admitted a desire to confess his guilt. The second consideration which counsel feels should be taken into account in passing sentence is the fact that the Defendant has indicated a willingness and a desire to testify either before a Grand Jury or a trial jury with respect to co-defendant, Gary Mills. This desire of the Defendant is part of no negotiation with the State of Florida has been sincerely offered by the Defendant solely from a desire to see that the truth concerning the allegations in the above-styled cases be brought out in a court of law.

WHEREFORE, counsel petitions this Court after careful consideration of all relevant factors as to sentencing to impose a sentence other than death against

the Defendant, DAVID LEROY WASHINGTON.

Respectfully submitted,

POLLACK TUNKEY, ROBBINS
& ROSENFELD
1700 N.W. 7th Street
Miami, FL 33125
Telephone (305) 642-9996

BY

WILLIAM R. TUNKEY, ESQ.

DECLARATION (EXHIBIT 2)

I, Lulu Parham, hereby declare under pain and penalty of perjury:

1. I am David Washington's grandmother and live Blountstown, Florida.

2. When David was growing up, he lived with me for many years.

3. David was a quiet boy. He never cursed in front of me, never smoked or drank and never raised his voice to me or talked back to me.

4. He was always helpful around the house when he was a young boy. While I was working, he would clean the house, wash clothes and cook meals for us.

5. When I became disabled in 1968, David would often skip school and work to get money for me, since I was not able to work.

6. About the time of the crimes, David

was very uptight about not being able to find a job. He often came to me, crying and saying he didn't know what he was going to do. He needed money for his family and couldn't find a job. He just seemed under a lot of pressure at this time and felt like his wife and child were suffering because he couldn't find a job.

7. When I saw David after he was arrested, I think he felt a lot of remorse, because he was crying and said he was sorry, but he had been desperate and panicked.

8. Everytime I see him now, all he does is cry and say how sorry he is.

9. I would have been willing to testify for David, but no one ever contacted me.

DATE: September

9, 1980

SS: LULU PARHAM

DECLARATION (EXHIBIT 3)

I, Julia Taylor, hereby declare under pain and penalty of perjury:

1. I am David Washington's mother and I live in Blountstown, Florida. I am presently the dietary supervisor at the Apalachicola Valley Nursing Home in Blountstown.

2. David was always a good, quiet boy and was peaceable and nonviolent. When David was young, his stepfather went to bed with one of my daughters. I think that got to David.

3. He always helped around the house and would get odd jobs to make sure his brothers and sisters had lunch money.

4. Shortly before the murders, David used to come over to my house in Miami a lot and cry and borrow money. I kept asking him what was wrong and he told me

he needed money for food and pampers and stuff, but he couldn't find any jobs.

5. One night around this time he came to me crying and told me he didn't know what he was going to do. His babies needed milk and he didn;t have any food for them. He told me he wanted to buy clothes for them, but his unemployemnt ran out, and he couldn't find a job. He told me he was tired of living like this. He seemed under a lot of pressure and was worried about his family.

6. I would have been willing to testify for David, but I was never contacted by anyone.

Date: September
9, 1980

SS: JULIA TAYLOR

DECLARATION (EXHIBIT 4)

I, Clarence Morgan, hereby declare under pain and penalty of perjury:

1. I am a younger brother of David Washington.

2. I am presently living in Blountstown, Florida.

3. I am a veteran of the United States Army and I served in Vietnam.

4. David always helped support me and my brothers and sisters when we were kids. He was always doing odd jobs to make sure we had lunch money and school clothes.

5. David always told me to stay out of trouble and "to keep my nose clean." He often kept me out of trouble when I was headed that way.

6. When I got out of the service after returning from Vietnam, I was using a lot of drugs. David spent a lot of time

talking to me then. He was always against drugs and talked me into getting into a program with the V.A. clinic in Miami. I stopped using drugs because of the support and help I received from David.

7. David was under a lot of pressure prior to the murders. He wasn't his usual self at this time and he didn't know what really to do. Everything was going bad for him. He had applied for jobs at a lot of places, but was unable to find anything.

8. I would have been willing to testify for David, but I was never contacted by anyone.

Date: September
9, 1980

SS: CLARENCE MORGAN

DECLARATION (EXHIBIT 5)

I, Renee Reed, hereby declare under pain and penalty of perjury:

1. I am an older sister of David Washington and am presently living in Blountstown, Florida. I am employed at the Apalachicola Valley Nursing Home.

2. David always helped my mother put us through school when we were younger. He used to do odd jobs to help buy clothes for us to make sure we had lunch money. He would stay out of school and babysit for us too, so my mother wouldn't have to find a babysitter.

3. David really helped me when I was growing up and tried to show us the right way to go. He always warned us about prisons and told us to stay out of trouble. He guided us straight when we were kids.

4. David tried to be friends with

everybody. I never saw him get into any fights, and he never seemed to have any enemies.

5. I would have been willing to testify for David, but was never contacted by anyone.

Date: September
9, 1980

SS: Renee Reed

DECLARATION (EXHIBIT 6)

I, Diane Taylor, hereby declare under pain and penalty of perjury:

1. I am a younger sister of David Washington and am presently living in Blountstown, Florida.

2. David used to always help support my family when my sisters and brothers and I were younger. He would do odd jobs in the neighborhood to make sure that we had lunch money or school clothes. When my stepfather wouldn't give us any money or our electricity was cut off, David would always go out and help by getting work..

3. David used to always tell us kids to stay out of trouble. He was always making sure that we didn't do anything that would get us into trouble.

4. David was always cheerful and friendly, nice to everyone. He wouldn't ever get

into fights, except for one time when he tried to break up a fight that my brother, Nathaniel Taylor, was in.

5. I don't know whether David knew about it, but when I was a kid my step-father used to make sexual advances to me on a number of occasions.

6. I would have been willing to testify for David, but no one ever contacted me about his case.

DATE: September
9, 1980

SS: DIANE TAYLOR

DECLARATION (EXHIBIT 7)

I, Gilbert Newkirk, hereby declare under pain and penalty of perjury:

1. I live at 8016 N.W. 10th Avenue in Miami, Florida.

2. I saw David frequently before he was arrested for murder and always found him to be a peacable and non-violent person. In fact, David was always real quiet around me.

3. David worked for me between 1968-1971, unloading tractors at the freight delivery department of Seaboard Airline Railroad in Miami. He was a very good worker for me, but he eventually had to be laid off along with several other employees.

4. I was always struck by the fact David never cussed in front of me and never drank, smoked or used drugs even

though there seemed to be a lot of pressure on him to do so.

5. I would have been willing to testify about David's background, character and personality, but I was never contacted or interviewed by anyone in connection with the case.

DATED: September 5, 1980

SS: GILBERT NEWKIRK

DECLARATION (EXHIBIT 8)

I, Virginia Snyder, hereby declare under pain and penalty of perjury:

1. I am a private investigator whose office is located at 38 South Swinton Avenue, Delray Beach, Florida. I was hired by Richard Shapiro, the attorney for David Washington, to investigate the background and personal history of Mr. Washington.

2. As part of my investigation, I attempted to obtain information about David's former employment.

3. On June 24, 1980, I contacted Associated Grocers of Florida, 6695 N.W. 36th Avenue, Miami, Fla., and talked with Mrs. Ruth Tyson in personnel. She advised me that David worked there from June 30, 1971, to January 16, 1972, and again from April 23, 1972 to May 9, 1972. She

indicated that David was satisfactory employee.

4. I have also verified that David worked at Burdines in Miami from February 19, 1973 to May 23, 1973 as a seasonal employee in the stock room. He went to work for the Miami Department of Solid Waste the following month. From there, he went to Food Fair in Miami where he remained until May 1, 1975, when he was laid off for lack of work.

DATED: September
9, 1980

SS: VIRGINIA SNYDER

DECLARATION (EXHIBIT 9)

I, Norman Cox, hereby declare under pain and penalty of perjury:

1. I live at 1634 N.W. 85th Street in Miami, Florida.

2. I am presently the band director at the Edison Senior High School in Miami and was formerly the director at Smith-Brown High School in Arcadia, Florida when David Washington attended school there.

3. David used to play snare drums in the Smith-Brown High School Band.

4. I recall that David was always a very fine young man, an outstanding leader in the band. He was always cooperative and dependable, well-liked by the other band members.

5. I was shocked to learn recently that David was on death row on Florida,

because the commission of murder is so totally out-of-character with what I knew about David Washington. He was always so peaceable and nonviolent, even though I always thought that his life was tragic. Yet David was obedient and seemed to be a religious youth, who was never involved in any fights with the other kids.

6. David was also a member of the Mount Zion AME Church in Arcadia and sang in the youth choir there. He also seemed to be liked by members of that congregation.

7. I would have been willing to testify about David's background and character, but I was never contacted by anyone in connection with David's case.

DATED: September
5, 1980

SS: NORMAN COX

DECLARATION (EXHIBIT 10)

I, Theron Carson, hereby declare under pain and penalty of perjury:

1. I was the president of the Greater New Bethel Baptist Church in Opalocka, Florida at the time that David Washington participated in the choir for about two years.

2. David was an active member of the church choir in 1976 and attended rehearsals regularly. Even when he had to miss rehearsals, he was conscientious enough to come by and see what he had missed. He often volunteered his services to raise money for the choir, selling eggs or participating in car washes. David was dependable and reliable and I knew he would do his job.

3. David was very helpful and cooperative and always appeared to be friendly,

peacable and non-violent. I always viewed him as a respectful, helpful and caring person. I remember on one occasion we had an anniversary for the choir and David had eagerly volunteered his help in the cooking for the group.

4. I was shocked when I read of David's participation in murder, since it seemed so completely out of character for the David Washington I had known and had worked with. I couldn't believe it was the same individual.

5. When the Choir was not singing at the church, I frequently saw David attending church services anyway.

6. I was in a position to provide evidence regarding David's background, character and personality, but I was never contacted or interviewed by anyone in connection with David's case.

DATE: September
5, 1980

SS: THERON CARSON

DECLARATION (EXHIBIT 11)

I, Judge Alexander, hereby declare under pain and penalty of perjury:

1. I live at 13350 Aswan Road, Apt. 317, in Opalocka, Florida.

2. I am director of the 70- to 80-member young adult choir at the Greater New Bethel Baptist Church in Opalocka, Florida.

3. I knew David Washington for two or three years before he was arrested, when he was a member of our church choir.

4. David was a dutiful, cooperative, mild and sweet boy when he was a member of the choir. David was dependable and reliable. He always willingly and diligently participated in fundraising activities for our choir.

5. I never saw David get mad or lose his temper and he always appeared to be a non-violent person.

6. I was very surprised when I saw David's name in the newspaper in connection with murders. My immediate reaction was to think that it was a mistake. I felt sorry for David as I knew he would be embarrassed by his name appearing in these articles.

7. I still cannot believe that the David Washington I knew could do the things he has been convicted of.

8. I would have been willing to testify about David's reputation and character, but I was never interviewed or contacted by anyone in connection with his case.

DATED: September
8, 1980

SS: JUDGE ALEXANDER

DECLARATION (EXHIBIT 12)

I, Wilene Robinson, hereby declares under pain and penalty of perjury:

1. I live at 4020 N.W. 191st Terrace in Miami, Florida.

2. I am the church secretary of the Greater New Bethel Baptist Church in Opalocka, Florida.

3. I knew David Washington for sometime when he was a member of the young adult choir of our church and regularly attended church services.

4. David always appeared to be a peaceable, cooperative, non-violent person. I always found him to be respectful, reliable and trustworthy. David had a reputation in the church for being helpful and dependable in the church choir.

5. I was shocked when I learned about the murders, because it seemed so out-of-

character with the concerned and involved person I had known at our church.

6. I would have been willing to testify about David's reputation and reputation and character, but I was never interviewed or contacted by anyone in connection with his case.

DATED: September
5, 1980

SS: WILENE ROBINSON

(EXHIBIT 13)

JESSE TROUPE:

[FIRST SIX PARAGRAPHS OMITTED FROM ORIGINAL]

During this time, he used to come over to the house and borrow money from me. Sometimes, he was so hungry that my wife would fix a sandwich for him or give him a meal.

7. I felt very sorry for David and his family at this time. The lights and water in their house and had been cut off, and his wife had moved out of the house. They had no money for food and David had drawn his last unemployment check.

8. I was completely surprised when I found out that David had been charged with murder, because he had always been such a peaceable and nonviolent person. In fact, based on my experience and contact with David, there is nothing really bad I could say about him. My wife, sons and daughters,

who all know David, have told me that they feel the same way about David.

9. We have discussed David and would have been willing to testify on David's behalf, but we were never contacted or interviewed by anyone in connection with the case.

DATE: September
5, 1980

SS: JESSE TROUPE

DECLARATION (EXHIBIT 14)

I, Cappie Martin, hereby declare under pain and penalty of perjury:

1. I live at 2830 N. W. 66th Street, in Miami, Florida. I have lived at that address for 20 years.

2. David Washington used to live with his parents across the intersection from where I live. David was already living there when we moved in. During the 16 years that I lived near David, I had an opportunity to observe him almost every day as he was growing up.

3. David always impressed me as a nice boy. He was very polite and courteous to me. He never appeared to have any problems with the other kids in the neighborhood. I never heard of him getting into fights or other trouble.

4. David was also a helpful youngster.

He was the kind of boy who would volunteer to help me carry groceries or other packages whenever he saw me having difficulties.

5. I was very surprised when I saw David's name in connection with the murders. I thought it must be some mistake because it was so out-of-character for the David Washington I knew.

6. I would have been willing to testify about David's reputation and character, but I was never interviewed or contacted by anyone in connection with his case.

DATED: September
5, 1980

SS: CAPPIE MARTIN

DECLARATION (EXHIBIT 15)

I, Leonard Brady, hereby declare under pain and penalty of perjury:

1. I live at 3872 N. W. 176 Terrace in Miami, Florida.

2. I am presently employed as a Lieutenant with the Dade County Safety Department.

3. Prior to 1976, I used to see David Washington on an average of three times a week for approximately ten years.

4. I was very surprised when I learned that David had confessed to murders, because I thought that it might have been Nathaniel Taylor, David's brother, who had committed the crimes. In fact, my first reaction when I heard David had turned himself in and confessed to murder was that he was covering up for his brother. It was perfectly in keeping with David's

personality to cover for his brother, even to going to the electric chair for him. I still find it hard to accept the fact that David committed the murders as opposed to his brother.

5. David was always a peacable and non-violent person who appeared to be respectful and caring. I am very protective of my children and yet I always trusted David with my children. I have also found David to be reliable and trustworthy, as it relates to any dealing with me.

6. In all of the years that I have observed deviant behavior as a police officer, I have never seen anyone do something like David has done, with the history and character that David has.

7. I would have been willing to testify on David's behalf about his background, character and personality at the time of sentencing, but I was never contacted or interviewed by anyone at that time in connection with David's sentencing.

DATED: September
8, 1980

SS: LEONARD BRADY

IN THE DISTRICT COURT OF THE UNITED
STATES FOR THE SOUTHERN DISTRICT
OF FLORIDA

No. 81-722-Civ-CA

DAVID LEROY WASHINGTON,)
)
Petitioner,)
)
vs.)
)
CHARLES E. STRICKLAND,)
Superintendent,)
)
Respondent,)
)
and)
)
THE ATTORNEY GENERAL OF)
THE STATE OF FLORIDA and)
LOUIS WAINWRIGHT,)
)
Additional)
Respondents.)
)
-----	-x

United States Courthouse
300 Northeast 1st Avenue
Miami, Florida
Friday, April 10, 1981
1:40 p.m.

The above-entitled cause came on for
writ of habeas corpus before the Honorable
CLYDE ATKINS, [Chief] United States District
Judge.

THE CLERK: Case No. 81-722-Civ-CA, David Leroy Washington versus Charles E. Strickland and the Attorney General of the State of Florida and Louis Wainwright.

MR. SHAPIRO: Richard Shapiro for petitioner, David Leroy Washington, and with me is local counsel, Mr. Lipman.

MR. FOX: Calvin Fox, Assistant Attorney General and Joel Rosenblatt, Assistant Attorney General for the respondents, your Honor.

* * *

MR. FOX: Your Honor, I have certain preliminary announcements I would like to make to the Court before we get underway with the hearing itself.

Just for the purpose of the record, your Honor, in light of the manner in which this proceeding came to the Court, I would like to announce that we do object

to the proceeding and we submit that the delay by the defendant in this case constitutes an abuse of the writ and that the proceeding herein can be rejected on the face of the record as we alleged in our original response.

We would urge this Court to examine what the defendant hopes to accomplish, the maximum he can accomplish, and that is he would have the opportunity to present two non-statutory mitigating circumstances.

The State, at the same time, would have the opportunity to add two statutory aggravating circumstances to their already vast array of statutory aggravating circumstances in this case.

In summary, your Honor, we submit that what the defendant does challenge is whether or not the death penalty in

this case was appropriately applied and we would submit that under the circumstances, this is not an appropriate Federal question.

Relying on Profitt vs. Florida, we would submit that there is no Federal question involved under these particular circumstances.

Finally, we would submit that the defendant has failed to meet its burden on the face of the pleadings. The burden herein is clearly upon the defendant and would rely on Davis vs. Alabama, 596 F.2d 1214 and it was on remand at 623 F.2d 356 and Cooper vs. Fitzharris, 586 F.2d. 1385.

As the Court has observed the findings of the State Court in this instance are presumed correct, and we would submit the rule of the Florida Supreme

Court and order of the trial court in this case are correct, and that no further proceedings are warranted.

[Objections noted by the Court].

[By the Court]: Are we ready to proceed?

Mr. Shapiro, do you have anything that you want to present?

MR. SHAPIRO: Your Honor, because of the circumstances under which the hearing was scheduled, I was not able to obtain any of the other witnesses that I might want to present at such a hearing.

THE COURT: Well, you have those affidavits and I am going to assume that they would have testified as set forth therein.

MR. SHAPIRO: Yes, but they are not exhaustive of the people that could be called and within the affidavits, the testimony of the witnesses could actually

amplify upon some of the statements in the affidavits.

The purpose of submitting the affidavits were not as a substitute for their live testimony, but illustrative of what their testimony would be.

* * *

MR. SHAPIRO: Just so the record is clear, I just want to note my objection with respect to the inability to present other witnesses because of the time factor.

THE COURT: You wanted a prompt hearing, did you not?

MR. SHAPIRO: Yes, your Honor, and I appreciate the Court's willingness to schedule a prompt hearing and to move this matter as quickly as possible.

I also, on the other hand, am concerned about insuring that I have an opportunity to present all the evidence in support of my client.

THE COURT: There was some fifteen affidavits filed.

Is that the number?

MR. SHAPIRO: Yes, your Honor.

THE COURT: I would assume they would testify as set forth therein.

MR. SHAPIRO: All right. Thank you, your Honor.

* * *

(By Defense Counsel):

Q Do you recall when you were appointed to represent David Washington?

A It was some time in the first week or so of October and the year was 1976.

Q Do you recall at that time what case you were appointed to represent Mr. Washington on?

A I think I even remember the number, 76-7600 and it involved the death of a person named Meli.

Q After being appointed to the case, what pre-trial preparations did you undertake for the legal representation of Mr. Washington?

[Objection overruled].

A My recollection of it and, of course, I am not certain that I will be complete, but my recollection is that among other things, we filed motions immediately attacking, of course, the Florida death penalty statutes.

There was motions filed for discovery and I am sure it was still the same rule as it is today, Florida Rule of Criminal Procedure 3.850 (sic) which is the discovery proceedings provided under Florida law in the State cases.

We made a few reciprocal demands for discovery so that the State would be required to provide to use, among other things, all witnesses who might have any

evidence relative either to the offense charged or with respect to any defense to the charge, that they would have to provide us with all scientific or medical testimony or expert witnesses that they might have.

We then engaged, and when I say "we," keeping in mind, there were co-counsels. Both the Public Defender was involved in the case and I know it was the law firm of Black and Denaro, or at least that is what it first was, and my recollection was that it was Jack Denaro who was representing a co-defendant.

We began to be engaged in the taking of depositions from the people who had been listed as State witnesses and other witnesses and initiated preparations for trial.

Q When you refer to the taking of depositions, you are referring to taking

depositions of people who had been listed by the State as witnesses at trial?

A That is essentially correct.

Q From what you have detailed, I understand that that was your preparation against the charges that had been made against Mr. Washington.

Was there any separate preparation at that time for the sentencing phase, for any possible sentencing phase in this proceedings at that point in time immediately after you were appointed to the Meli case?

A Only to the extent that obviously I considered as I was gathering the evidence and reports on the case and being aware at that time of what the various aggravating and mitigating circumstances were under the Florida statutes, I was, and in terms of thinking through how we might be at the end of that particular

proceeding if we got to it.

As far as actively searching for witnesses to address either a jury or a court and a Judge, I would say no, that we were not really addressing ourselves to that issue at that point in time.

Q And as I understand it, then, in deposing these State witnesses, you were looking for information in their testimony or in their depositions that would either relate to the aggravating or mitigating circumstances under the statute?

A I think--no, I am not going to say that.

I am saying if this is the stage that you are asking me question about, our goal at that point would have been twofold, and I don't think that either one of them was what you are suggesting.

One would have been to establish that

there was not proof beyond a reasonable doubt that we could create.

The second would have been to try to establish a bases to try to suppress evidence or to otherwise dilute the strength of the State's case in a trial posture.

This did not go on for that long a time, however. We were---well, that is my answer.

Q At this point in time in your preparation, what problems did you begin to anticipate in the representation of your client and the presentation of his case?

[Objection sustained]

BY MR. SHAPIRO:

Q Let me just ask some specific questions. Did you feel that you were limited in your ability to prepare in your time to prepare in this case? Were there any limitations placed on you?

A Well, I mean only insofar as the

Court giving dates and if you would help me out, with the Court's permission, I would like to know the date that Mr. Washington confessed to the second and third set of homicides.

Q My understanding was that was in mid November.

A That is my recollection, also, but I am just asking you for some instruction on the point. That is my recollection.

Q Did you hire an investigator at this point in time?

A No.

Q Did you ever hire an investigator in preparing for this case?

A No.

Q Did you file any motion with the Court for an investigator?

A No, not to my recollection.

Q How was your investigation conducted at this time?

A Well, it was conducted primarily through the State and by that I mean the State Attorney's office was having an almost open filed discovery in the Meli case and certainly when the Pridgen and the Birk's case came to pass, they were providing literally open file discovery and by that I mean police reports, I would not probably have gotten them.

They were providing them and I was getting a complete list of witnesses and I was getting copies of all reports up until the time--and this is why I asked you for the date on the confessions on the other two cases--up until I am going to say mid November, using your date, there were active preparations being made by way of subpoenas to summon witnesses to attorneys, officers, either the Public Defender's office or the State Attorney's office, so that those witnesses might

testify and give us a preview, so to speak, of what their testimony was going to be.

It was those kind of things, the normal kind of discovery process that was taking place in the Meli case and I will say that when Mr. Washington was arrested in November of 1976, on the second two cases that at that point there were events which occurred derived directly from thoses arrests which caused a cessation, if you will, for preparation on the Meli case in the trial posture.

Q You are referring to Mr. Washington making statements with respect to two other cases?

A Yes.

Q Do you recall what your reaction was when you learned that Mr. Washington had been indicted on two other cases?

A A fair amount of surprise among other

things and to be very candid with you and to completely answer the question fully as I think it should be in these type of proceedings, I had many, many hours of detailed conversation with David up until this point, up until the point of finding out and as I recall, I simply walked into the Justice Building and ran into, as I recall, Hank Adorno who is one of the prosecutors and perhaps one of the detectives, and was told that he had been arrested and that he had confessed and, in fact, they handed me an entire package of evidence on the case.

In any event, up until that point, I had been spending a great deal of time with David and vis-a-vis the kind of evidence that the State seemed able to produce in the Meli case, it was like night and day to sit down and talk to David.

David, so far as I was concerned, was intelligent, although perhaps not well educated, was certainly a person who expressed very capably human emotions, who expressed grave concerns about the welfare of his family, of his wife, of his child in a-l of my dealings with David, we had like an instant rapport one with the other, and I certainly felt very concerned for his well being and frankly found it difficult to believe that he could have committed the crime which he was then charged in the Meli case.

So, to answer your question, yes, I was shocked and surprised and I was particularly surprised in light of the fact that I had counseled David and that it was possible that he might be approached by detectives and someone attempting to question him and when I discovered that he had almost initiated the contact with

the detectives and had specifically on the record been advised that he had a right to have an attorney there and even mentioned the fact that the had a right to have me there by name, he waived those rights and it made me doubly surprised to find out about what I call the Pridgen and Birk case.

Q Do you recall talking with me about these matters in February of 1980?

A I recall that we conversed on the telephone. I have no notes of that conversation. You might.

Q Do you recall describing your feelings when you had learned about the other two capital murder indictments as a feeling of hopelessness in terms of coming up with any kind of defense in this case?

A Yes, I do recall saying that to you and once I saw the confessions that

David had given, I had a hopeless feeling. There is no question about that.

Q In your discussions with David, did you ever inquire of David whether he had a psychiatric history?

MR. SHAPIRO: May I strike that, your Honor?

THE COURT: You may.

BY MR. SHAPIRO:

Q Did you ever inquire of David as to whether he had ever been examined by a psychiatrist or a psychologist in the past?

A I honestly cannot recall. If I gave you a definitive answer of yet or no, it would be a lie.

Q Did you independently arrange for a psychiatrist or psychologist to examine David?

A That I know I did not.

Q Did you ever file a motion in the court to ask for funds for a psychiatrist

or psychologist to examine David Washington?

A If such a motion was filed, it would be in the record. My recollection is that there was not.

Q In your preparation for this case in your discussions with David, did you ask him whether he had any criminal record?

A Yes, and he was--yes, I discussed it with him. That is my answer, yes.

Q Did you ever have occasions to determine whether he had been previously incarcerated?

A I believe that was part and parcel of the same conversation.

Q Did you learn that he had been previously incarcerated?

A I believe so.

Q You never learned that from him?

A No, I didn't say that. I said I don't believe that he had been based upon

his conversations, I don't believe he had been incarcerated.

You mean sentenced, I presume?

Q Yes.

A Okay.

Q Did you make any other effort to determine whether he had ever been within the custody of the Department of Corrections or any other custodial facility in Florida?

A As part of the discovery material which I had, I had been given a copy of the FBI rap sheet by the prosecuting attorneys. I think it might be part of the record.

But in any event, my recollection is that even that revealed a lack of any convictions and certainly incarcerations. That is my recollection.

Q With respect to the sentencing in a capital proceeding, you mentioned that you

had reviewed the aggravating and mitigating circumstances.

What preparations had you undertaken to present evidence in support of mitigating circumstances or to rebutt any of the aggravating circumstances?

A That is a very difficult question because of how the whole guilty plea came about.

What the defendant did by entering a plea of guilty was essentially something that was contrary to what my advice was. It was, in my estimation, however, consistent with his conduct with the police officials to whom he gave confessions under the second two cases.

I had on occasions prior to December, prior to when he entered the guilty plea, spoken with either his wife or the woman he was living with, I believe it was his wife, and I believe his mother, and

although I can't be certain of the next statement, I am relatively certain that there had been some kind of written communication with either or both of them, the gist of which was that I wanted to speak with them in my office, to discuss with them--to just sit down and talk with them.

They never kept any appointments or I know I never met with them in my office. Now, beyond that, as far as actively going out and saying I am going to bring in former employers or anybody to testify on David's behalf, the direct answer to that is that I did not do any of those things.

So, that is the answer to the question.

I would say that the investigation, and I don't really think that is the term to use, but the work that was done to locate prospective witnesses to testify on his

behalf, I will call it minimal and that is using hindsight.

Q So, you never talked or attempted to locate witnesses to testify on David's behalf at the sentencing hearing?

A That is correct.

Q Did you ever have occasion to talk to David Washington about his childhood?

A Yes.

Q What information did you learn from him about his childhood?

A To ask me now what recollection I have of those conversations is really almost impossible for me to recall. We are talking about something that happened four and a half years ago at this point. I can't answer that.

I can recall basically that my recollection is that he did not complete high school, that he worked at a succession of

menial jobs, that he had trouble holding jobs, that he had been out of work for some several months, as I recall, prior to the arrest in the Meli case, that he had a wife, a child and that he was having difficulty supporting them.

But if you are asking me what history did I have as far as formative years and by that I mean the years from age one up to age fourteen or fifteen, I certainly don't have a wealth of knowledge to impart to you at this point and I can't say that I have any recollection of any of those conversations at this point.

Q And you do not recall going to talk to his relatives or if they came to meet you at your office or if you talked to his mother?

A I can say that I did not do that.

Q Or his wife?

A I can say that I did not do that.

Q Were you aware that David had a grandmother?

A No.

Q Were you aware or did you attempt to seek information that would establish that David Washington was abused as a child?

[Objection overruled].

BY MR. SHAPIRO:

Q Do you recall the question?

A I never received anything one way or the other.

Q You did not?

A I did not.

Q Did you inquire into the defendant's childhood to determine whether he had had an abused childhood?

A I really can't say. I think I can say that if he had described such a childhood, that I would at this time recall it.

front of a jury, that I was dead certain that the State or the prosecution would try, in aggravation or as aggravating circumstances, would attempt to utilize the evidence from the subsequent two indictments, the Pridgen and Birk case, as the record says, I had just received either that day or some short period of time prior to that day, a massive amount of discovery in the Birk and Pridgen cases and it was clear that I was not going to have time between that date and the arraignment date on November 26th or 27th and the trial date that had been set in the Meli case, to fully investigate the evidence in the Pridgen and Birk case.

By that, I mean to depose the witnesses, to fully sit through the various reports that I had in terms of being able to cross examine the witnesses in the Pridgen and Birk case to establish a lack

witness, your Honor?

THE COURT: You may.

MR. FOX: Your Honor, may I see the passage?

THE COURT: You may.

BY MR. SHAPIRO:

Q Do you recall at that point asking for a continuance in the Meli case because you had an inadequate time to prepare for the penalty phase because of the recent indictments that were handed down against your client?

A Well, yes, with the explanation simply that we were facing an upcoming trial date, according to that transcript, of about a week later on the Meli case and my concern at that point was that if, and that is the "if", if there had been a conviction at trial of the Meli case, in the 7600 case and we were then after a conviction to go into a penalty phase in

would have been kind of silly.

Q Can I read from this or ask you if you recall colloquy?

A Certainly or just show it to me.

[Objection]

MR. SHAPIRO: May I approach the witness?

THE COURT: You may.

THE WITNESS: Are you referring to the underlined portions?

BY MR. SHAPIRO:

Q I direct your attention to the page that you are presently looking at and the next page, specifically the underlined portions in that colloquy between you and Judge Fuller.

A Oh, yes, okay, the whole thing in context I remember completely.

Q Does that refresh your recollection?

A Yes.

MR. SHAPIRO: May I approach the

back.

BY MR. SHAPIRO:

Q I will repeat it.

Do you recall discussing after the two subsequent indictments had been handed down, the second and third indictment had been down against David Washington, do you recall requesting additional time for the penalty phase in the Meli case?

A Not specifically, but I wouldn't doubt that it happened. It doesn't sound really quite right to me. I would almost be certain that I did not couch anything on those particular terms because the guilty plea, so far as I recall, it was not entered until December.

So, to have asked for more time in November for a sentencing phase to which there had been no adjudication of guilt

Q --of any activities in the community?

A [No response.]

Q With respect to the proceedings on 11/22/76 and 11/24/76, I believe there was some discussions regarding a continuance in the Meli case.

Do you recall those discussions?

A No-- Yes-- I mean, I recall that, but I don't recall the dates as being actually the dates that it occurred. I am certain there was some discussion at that point in light of the developments in the case.

Q Do you recall at that point requesting additional time in the Meli case because of the two indictments that had been--

[Objection overruled].

THE WITNESS: Please repeat the question or have the court reporter read it

But I don't recall it. That is my answer.

Q I understand that, but do you recall inquiring of him whether he had an abused childhood?

A No, I am saying that I cannot recall inquiring of him.

Q Did you have any information about any activities of David Washington in his community around the time of the crimes?

A No.

Q Did you make any investigation to find out what kind of activities David Washington had been participating in around the time of his crimes?

A Yes.

Q What kind of investigation did you undertake?

A Just conversations with David.

Q Conversations with David, but no independent investigation--

A No.

of credibility in that case or, alternatively, to adequately even research the issues in that case to see what kind of evidence could be used as aggravating circumstances in a case which, in a point of time, occurred after the two cases which, in effect, were going to follow the last case for trial. I don't know

Q Were there any other concerns at that time about your preparation for a possible penalty phase in the case?

A I am sure, Mr. Shapiro, my concerns were not too different than what you are concerned with here today. Yes, I was very concerned about it.

Q At the guilty proceedings on December 1st, what was the reason for not asking for a continuance at the guilty proceedings when you indicated a short time before your had not had an adequate

time to prepare?

A Keeping in mind there is a certain subjectiveness to all of this being it is four and a half years later, but based upon the nature of the charges that I was being requested to defend and which I was willing to defend, the clear probability from a legal standpoint, just from a detached view of the distince possibility of the imposition of at least one death penalty in these various cases, it was not, in my opinion, to Mr. Washington's best interest to go to trial.

Mr. Washington confessed without having me there. Mr. Washington also essentially chose to enter a guilty plea against my better judgment.

Against my better judgment, he chose to waive a sentencing jury and that that point I can honestly say that I don't know

Mr. Washington confessed without having me there. Mr. Washington also essentially chose to enter a guilty plea against my better judgment.

Against my better judgment, he chose to waive a sentencing jury and that that point I can honestly say that I don't know that I felt that there was anything which I could do which was going to save David Washington from his fate.

Q So, that essentially was your feeling?

A I mean I had that feeling, I don't understand what you mean.

Q That was your reason for not moving for a continuance?

A As far as the time between the entry of the plea and the first of December and the sentencing hearing a week later or six days later, whatever it was, I really cannot say that the actual thought of going in and affirmatively and aggressively moving for a continuance really occurred to me.

that I felt that there was anything which I could do which was going to save David Washington from his fate.

Q So, that essentially was your feeling?

A I mean I had that feeling, I don't understand what you mean.

Q That was your reason for not moving for a continuance?

A As far as the time between the entry of the plea and the first December and the sentencing hearing a week later or six days later, whatever it was, I really cannot say that the actual thought of going in and affirmatively and aggressively moving for a continuance really occurred to me.

Q At that point in time, what was your strategy for the sentencing phase?

A Among other things and certainly one

of the few things which I took into account as an attorney , which I can't I discussed with David, but I took into account simply from the familiarity with the trial Judge, Richard Fuller, was that he, being the trial Judge, respected any individual who had been accused of a crime and who, in fact, was guilty of a crime and who came before him and admitted his guilt.

To myself, I certainly thought if David had any chance at all, and I am really getting subjective, in front of this partiucular Judge, on this particular facts for these particular kind of crimes, that the one shot he perhaps had was the fact that he genuinely was coming before the Court and admitting his guilt, unlike some defendants who come in and plead guilty to avoid a harsher punishment.

I really felt that Judge Fuller knew this was not such a ploy by Washington and based upon that and my subjective analysis of Judge Fuller at that time at that state of his career as a Judge, I felt that perhaps the strongest point that David had to save himself from the electric chair, and I can't say that this was fully discussed between David and I, but the thought went through my mind, keeping in mind the mitigating factors which the statute set forth at that time and some had already been put on the record as far as the testimony on December 1st is concerned from David himself, but I went through all of the aggravating and mitigating circumstances which the statute described and I was familiar with all the cases to that point that had been ruled upon the statute and various aspects of it, and I felt that one of the mitigating circumstances ought to be the fact that he was pleading guilty.

I really could find very little to address myself to in terms of a relevant, cogent presentation of mitigating circumstances as outlined by the statute itself and certainly insofar as aggravating circumstances are concerned, I did not feel exactly like I had sufficient ammunition to persuade anybody that the State was not going to succeed in showing at least that they outweighed the mitigating circumstances.

I felt it was more of a legal argument at that point as far the aggravating circumstances were concerned.

* * *

Q What were your reasons for not requesting a pre-sentence investigation in this case?

A We were dealing with convictions at that point--

[Objection overruled].

A Yes, sir, under State law with convictions in three separate cases for the

crime of first degree murder, the sentencing Judge with regard to the charges and convictions for a murder in the first degree, had a choice only between life sentences with minimum mandatory terms without parole of twenty-five years or death in each of the cases.

Now, my understanding of State law at the time, and correct me if I am wrong, was that it was discretionary with the trial Court whether to give it or not to give it.

I don't recall specifically asking for it. I cannot say now, with hindsight that that was a matter of trial strategy or perhaps lack of forethought at the time and I can only say that I personally didn't believe that there was going to be anything in a PSI which was going to be helpful to Mr. Washington, vis-a-vis a sentencing for the particular crimes that were charged.

I was somewhat concerned that it might establish facts more detrimental to my

client than were already on the record if that is possible.

Q But you are also aware that a pre-sentencing investigation would involve an inquiry into the defendant's background, childhood, social history.

A Of course.

Q And it would present this information to the Judge?

A Absolutely, but I can't say that I thought about it in those terms at the time.

I mean, I am aware of all of those things, obviously.

Q You mentioned Judge Fuller would be more responsive to someone who pled guilty to the crimes.

A This is a very hard question to answer. But I think, as a trial attorney, I think that certainly one of the things which a trial attorney is responsible for is knowing, at least to some extent, the quirks and differences of opinion, political philosophy,

philisophoical approach to the law which varying judges demonstrate in their day-to-day activities.

On particular facet of Judge Fuller's personality, if you will, as a Judge, was simply that it was my personal feeling that if a person were guilty and I preface it with that, that if a person were guilty and came before the Court and pled guilty as opposed to going to court and hoping to "beat the case" and then losing, that that person was going to get a lighter sentence.

In other words, if there was a conviction obtained in either of the circumstances, that the person who pled guilty was more likely to get the lighter sentence. I am not saying that is right, but that was my personal opinion of the Judge at that time.

Q Do you think that Judge Fuller would have been concerned about a defendant's remorse?

A Oh, yes, I think that was all part and

parcel of David's attitude in court and also to me out of court. That is why I had the strong feeling that this was the most important thing he had going for him.

Q Did you ever think of members of David's family coming to the hearing and testifying about remorse that David Washington felt?

A My recollection was that there was some communication of some conversations at this point.

Now, I can't swear to this. I really don't think David--I don't know.

My recollection is that no one was there from his family and my recollection of conversations with David was that he did not want anybody there.

I can't swear to that, but that is my recollection.

Q Well, even if David had suggested to you that he didn't want anyone there, in order to more properly present any case of remorse to Judge Fuller, did you ever consider

-- Strike that.

Even if David didn't want anyone there fore purposes of a sentencing, did you even consider that it would have been more important for Judge Fuller to have heard about David's remorse from members of his family or other people that had contact with him subsequent to the commission of the crime?

A No, I never considered it that way.

Q Did you ever consider having a minister or other clergyman visit David in the jail to discuss any possible remorse and to testify at the sentencing hearing?

A No.

* * *

BY MR. SHAPIRO:

Q Now, do you recall filing a sentencing memorandum before Judge Fuller prior to the December 6th sentencing

hearing?

A My recollection is that there was.

Q May I show you a memorandum of pre-sentencing and ask you if you filed this memorandum before Judge Fuller prior to the sentencing hearing?

MR. SHAPIRO: May I approach the witness, your Honor?

THE COURT: You may.

THE WITNESS: This is certainly a pleading which I filed, yes, or prepared and I presume filed.

MR. SHAPIRO: Your Honor, this is Exhibit 1 to the petition that was filed in the State Court attached to the motion for post conviction relief.

BY MR. SHAPIRO:

Q Now, referring to that memorandum, have you had a chance to review that memorandum?

A Briefly, yes.

Q In that memorandum, as you will notice, there is no argument whatsoever with respect to the applicability of aggravating circumstances (5)(e) Felony was committed for the purpose of avoiding or preventing an unlawful arrest or effecting an escape from custody.

Do you recall why you did not present any argument as to the applicability or inapplicability as to that aggravating circumstance in this case?

A I don't believe that is the only one that I didn't address. Maybe it is.

Q But it is the only one that you did not concede or did not address.

A I believe that is correct.

Q Do you recall why?

A Not now. I know what I did on the brief on appeal, but I don't know why. I can't say now why I did it at the time.

Q Now, with respect to the mitigating circumstances, I believe in the memorandum you conceded that there was no evidence that the capacity of the defendant to appreciate the criminality of his conduct or confirm his conduct to the requirement of law was substantially impaired.

That is aggravating circumstance (6) (f).

A You mean mitigating?

Q Mitigating, pardon me. I believe you conceded the inapplicability.

A I don't know if I conceded then. I don't believe I raised it either. So, I guess by innuendo you can say that.

Q I refer you to the first page of the memorandum.

You do mention that you concede that is not applicable in the present case.

A Yes, that is correct.

Q Now, without obtaining a psychiatric examination or psychological evaluation of Mr. Washington, what was your reason for conceding the inapplicability of that mitigating circumstance [6B]?

A I cannot say today whether I ever saw the Jackson Memorial report of Sanford Jacobson. I have seen it since.

I can't say that I saw it or did not see at that time.

So, in direct answer to your question, I never saw any medical reports that I can recall as of today, although it is possible that I did.

The only thing that I can say in response to that question is very simply is that point, from six or seven years as a trial lawyer in criminal cases exclusively, both as a prosecutor and defense attorney and based upon extensive

communications with Mr. Washington himself, I just did not see it.

To me, the man was sane.

Q All right, sane.

And is it your understanding that mitigating circumstances (6) (f), that the scope of that is co-extensive with the insanity test in Florida?

A No, I don't think that is that simple, but I would say, to me, that they are not necessarily mutually consistent, but certainly one could be said to be part of the other.

But provision (6) (f) is even broader. I suppose I could go further to say that the act was produced by a man that was so over wrought or I don't know what word you would want to use, that there was some hint of insanity, that that was not an excuse for the crime, but rather, I guess, you could call it a mitigating factor.

But as far as David was concerned, he had expressed even the reason really for the commission of the crime which had been committed, as far as the Meli case was concerned and the Birk case and Pridgen case, I can't say that is necessarily true, but he indicated to me a clear understanding of why he had a committed a crime.

He had already said that in court in the sentencing colloquy between himself and Judge Fuller on the first hearing in September and seemed to indicate that he knew what he was doing and it was pecuniary gain.

Q Mitigating circumstance (6) (f) also refers to the inability for someone to conform their conduct to requirements of law, the capacity of the defendant to appreciate the criminality of his conduct

or to conform to his conduct to requirements of law, that it was not impaired.

A I certainly thought that was not applicable.

Q You thought that was not applicable without obtaining any psychiatric or psychological evaluation of the defendant?

A That is correct.

Q But as I recall your memorandum regarding (6) (b), the Capital Felony was committed while the defendant was under the influence of extreme mental and/or emotional disturbance.

A I did not equate them as being the same. I see where you are going. Maybe I should have because he said he had been out of work for six months and he had impressed me as being sincerely concerned for the welfare of his wife and child. I believe his words were that he could not

even buy pampers for his kid and that was the starting point of him being engaged in these series of acts.

Q But my question is, why once having chosen to argue that particular mitigating circumstance, why did you not seek a psychiatric or psychological examination of David to support your presentation of that circumstance?

A I did not equate what I was attempting to show Judge Fuller with that particular mitigating circumstance with any kind of testimony which a psychiatrist might offer.

It was unrebutted on the record as to the reason why he had become engaged in this series of criminal acts and his unrebutted testimony was that he had been under the emotional distress as far as what I told you about his inability to

support his family or himself.

To me, it was two-edge sword I guess you could say because the farther we went with it, the more obvious it became what the actual purpose of the various crimes, were, to get money.

Q So, it was in your judgment at that point that a psychiatric and psychological examination of the defendant would in no way help you to present the statutory or mitigating circumstance?

A That was my judgment at the time.

Q With respect to the non-statutory circumstances that may have provided Judge Fuller with a reason in the defendant's history or background for his conduct, did you also conclude that a psychiatric or psychological evaluation would not be helpful at all in the presentation of any non-statutory mitigating factors?

A Yes, my answer was the same to that throughout, that it would not be of help. Right or wrong, that was my judgment at the time.

Q What was the reason for not conducting any investigation of David Washington's background, character and circumstances surrounding the time of the offense?

A I think the easiest way to answer that I suppose is to say that there had not been much cooperation at that point and secondly, as I keep saying, having talked with David for lengthy periods of time, I was not of the opinion that we were going to glean something from his background to sway the Court not to impose the death penalty.

Q Then, my question is: You do not think it would have been a benefit through a presentation of the circumstances of

David's life, that the crime would not be an abnormal, obvert action of David Washington?

You didn't see that?

MR. FOX: Your Honor, I object. Counsel is putting words into the witness' mouth.

THE WITNESS: I never thought of it in those terms. I do not now and never did at that time.

BY MR. SHAPIRO:

Q So, your choice as to which the statutory mitigating circumstances and which non-statutory mitigating circumstances to present was based on your judgment of the situation without any investigation and without any psychological or psychiatric examination of the defendant?

A Well, I don't like the way the question was worded because it is trapping me.

The first way I am going to answer the question is to say that I would like to think at the time that I thought of every possible mitigating circumstance that I could possibly have thought of and tried to present to Judge Fuller at that time.

But in direct answer to your actual question was that I did not think at the time to go ahead and utilize psychiatric or psychological experts to somehow demonstrate the overriding the nature of the mitigating circumstances, I did not think of that.

MR. SHAPIRO: May I have one more moment, your Honor?

THE COURT: You may.

MR. SHAPIRO: I have no further questions.

THE COURT: All right. Cross examination.

CROSS EXAMINATION

BY MR. FOX:

Q Mr. Tunkey, you mentioned that you had been in practice seven years at the time of this case; is that correct?

A Six and a half years, I think.

Q When were you admitted to the Bar?

A In May of 1970?

Q What was your prior experience prior to this case?

A I was Assistant State Attorney in Richard Gerstein's office from May of 1970 until May of 1973.

From May of 1974, until my appointment to represent Mr. Washington, I was engaged in private practice and was almost exclusively concentrating my practice on trial and appeals in criminal cases.

Q Have you been appointed in other cases to represent defendants?

MR. SHAPIRO: Your Honor, I object to this line of questioning. I think the issue before the Court is the narrow one of Mr. Tunkey's performance in this case and not one of the general competency of Mr. Tunkey of which we do not question.

MR. FOX: Your Honor, I think--

THE COURT: Overruled.

THE WITNESS: Yes, I had.

BY MR. FOX:

Q Approximately how many cases before this case?

A Between cases in which I myself had been appointed or in which other members of the firm had been appointed, but I was the attorney with either trial or preparation responsibility, I am certain that it was something in excess of a 100 cases at that point as a Special Assistant Public Defender.

Q How many criminal cases had been

handled up to that point as both a prosecutor and defense counsel?

A I couldn't even begin to count, something certainly beyond 500 or 600, perhaps over a 1,000.

Q Mr. Tunkey, your testimony here, is that exhaustive as to your investigative preparation of the Meli case?

A No, not at all.

MR. FOX: Your Honor, for your information and for the witness' information, the Meli confession was on 10/1/76. The Pridgen confession was 11/5/76, and the Birk confession was also on 11/5/76.

BY MR. FOX:

Q You testified that the State, during your representation, was providing open file discovery.

A Well, so far as I knew it, yes, that's how I would term it.

[Objection overruled]

BY MR. FOX:

Q Prior to the defendant's plea of guilty in these cases, Mr. Tunkey, were prepared to go forward with the case?

A What do you mean by "go forward"? Do you mean the trial?

Q Yes.

A On the Meli case, I would say we were getting close to being ready to go trial, yes.

Q How would you characterize the State's case in the Meli case, in your experience?

A Well, assuming the admissibility of the confession, I would say that the evidence was close to overwhelming. That was a major assumption, I think, on that particular confession.

Q All right.

How about with regard to the Pridgen

case and the Birk case?

A Well, my memory is kind of dim at this point as to what kind of corroborative evidence there was of a direct nature which would point a finger at David Washington in either one of those cases.

But again, assuming the admissibility of those two confessions, there was certainly ample evidence to demonstrate that the confessions were not given by a person unfamiliar with the facts of the case.

Q Are these confessions the events which you referred to that cause you a cessation of preparation?

A A cessation and end, yes, those are the events.

Q And the plea of guilty, that was over your objection?

A It was against my advice. I just don't recommend a guilty plea in any case

on which I am not really getting anything.

Q You testified that you were not aware of the defendant's criminal background.

A Yet, I am aware of it. I was aware of it at that time. I cannot tell you today what it was or what it is.

Q You cannot recall the specifics of that?

A No.

Q You would not be aware one way or the other whether or not he had a prior felony conviction or not?

A I think he did, but I don't think the rap sheet could prove it. I think that's basically what it came down to.

Q Now, counsel has mentioned that you did not investigate former employers and witnesses and so forth.

Did the defendant mention anybody

as witnesses on his behalf with regard to the sentencing proceeding?

A No, not in those terms, but I mean we had discussed where he had worked and those kind of things and primarily the fact that he had been out of work for three or four months before the Meli case or the Pridgen case occurred.

So, the direct answer to the question is no, not in those terms, although we skirted around the issue, I guess you could say.

Q Did the defendant bring up any evidence that he had been abused or make any comment that the had been abused as a child?

A Not that I recall, not that I recall.

Q Did the defendant discuss with you any activities prior to the murders?

A Oh, certainly.

Q Any sort of criminal background prior to the murders?

A Yes, and that was even part of one of the confessions, as I recall it.

Q So, you are aware that the defendant had a prior criminal background from the defendant's own words; is that correct?

A Yes, it was part of the confession in the Birk case essentially.

Q With regard to the defendant's attitude towards the trial Court as being one of remorse, you testified that the defendant did demonstrate that remorse; is that correct?

A Yes.

Q Isn't it true, Mr. Tunkey, that the defendant himself would be the best evidence of this own remorse?

[Objection sustained]

BY MR. FOX:

Q Mr. Tunkey, why didn't you produce anyone from the defendant's family at the

time of sentencing to demonstrate his remorse?

A First of all, I had trouble getting in touch with them, but assuming I could have gotten in touch with them, but the remorse that was shown, I assume it would have been shown in jail since he was not any place but jail from the day of his arrest until the sentencing on the 6th of December.

I also thought it would have been superfluous because the remorse that David exhibited to me in court was of sufficient quality and quantity that it was obvious, to me anyway, and I thought to the trial Judge, that it was completely sincere, that it was not something that was phoned up, if you will, to try to get a life sentence. In a rather ingenuous point at a hearing, I don't know which one, David expressed the thought that it would probably be better to be sentenced to death than to rot in jail for the rest of his life.

Now, regardless of whether that was a request for a death sentence which I don't think it was, but regardless of what connotation you give to that statement, the statement itself I thought showed the truthfulness, ingenuousness of the person, that he was really sincerely up there trying to explain to the Court that he was genuinely sorry for what he had done.

There were times that he, even through tears which is not on the record, exhibited his true remorse for what had occurred and I would certainly say that he was honestly remorseful for everything that he was charged with.

Q Would those witnesses have added or detracted from the presentation?

A I can't answer that question. There is no way of knowing that.

Q Mr. Tunkey, late in your direct examination, you indicated that psychiatric examinations would be two-edge sword to your presen-

tation.

Could you explain that analysis to the Court?

A Yes. Very simply, that if they had been presented ot the trial Judge, they could have just as easily established, it seems to me, the fact that the defendant was apparently engaged in these type of activities for really no other reason than the pressing economic need of his family. I don't believe that offers a legal justification for the acts committed.

Q Mr. Tunkey, I would like to reiterate one point here.

You testified that there was nothing from the defendant's prior record which you considered would have been of substantial benefit to the defendant in swaying the Court from aggravating circumstances in this case.

A That's correct.

* * * *

[CROSS EXAMINATION]

BY MR. SHAPIRO:

Q Mr. Tunkey, you have had an opportunity to review the reports of Dr. Lane and Dr. Barnard; is that correct?

A Yes.

Q And you testified that those reports are consistent with your professional judgment?

A Yes.

Q Do you also feel that they present information that would have been admissible as a non-statutory mitigating factor at a sentencing hearing in this case?

A Oh, certainly, I think it would have been admitted into evidence. Yes, I believe that.

Q In essence, you said that the reports would be corroborative of your presentation to the sentencing Judge; is that correct?

A Yes, in most respects, yes.

Q Isn't it true that the reports also linked the events in the defendant's child-

hood with his behavior at the time of the crimes in a manner that was not presented to the sentencing Judge?

[Objection Sustained]

[REDIRECT EXAMINATION]

BY MR. FOX:

Q Mr. Tunkey, I refer you to Page 226 of the record at the conclusion of the State's case at the sentencing hearing and I would like you to examine that and see if you recall that passage. It is at the bottom of that page and into the next page.

I believe the record reflects a recess and a conference with the defendant.

A Yes.

Q Do you recall whether or not it was discussed whether or not the defendant would testify or whether or not there was any evidence or witnesses that the defendant wanted you to put on, anything of that nature or that sort?

MR. SHAPIRO: Your Honor, I believe

this is out of the scope of my cross examination or beyond the scope of my direct examination or beyond the scope of the Attorney General's direct when he made this witness his witness. I think it is an all new area of inquiry.

THE COURT: Well, I think it is, but I am going to permit it and you can come back on it because of the nature of the proceedings.

BY MR. FOX:

Q Do you recall if there was any discussion with the defendant at that point as to him testifying or not testifying and/or any evidence he desired to put on?

A The primary discussion which we were having is whether he was going to offer any further testimony from that which was offered on December 1st.

Q The plea colloquy?

A Yes, and anything further on that.

Q Anything further or was the decision made

to offer anything further?

A Yes.

Q And what was that decision?

A Not to.

RE CROSS EXAMINATION

BY MR. SHAPIRO:

Q The decision that you just referred to was a decision by Mr. Washington that he personally did not want to offer any further information or testimony beyond what he testified at the guilty proceedings?

A That is exactly what I meant.

Q He did not discuss with you whether he did or did not want to discuss any additional evidence or testimony of anybody else at that time?

A I don't believe he requested testimony of anybody else.

Q When you had this discussion with him, it related not solely to him, but--

A It related to him and, of course, if he testified that he could then be cross

examine on the rap sheet. I was afraid that the cross examination would turn into a lengthy one by the State Attorney.

Q What I am trying to understand, did Mr. Washington tell you that he did not want any additional evidence or testimony at his sentencing hearing or did he merely tell you that he did not wish to testify personally beyond what he said at the guilty proceedings?

A That was it, if he did not wish to offer any additional testimony and rely on the prior testimony and avoid cross examination. That was our particular point of discussion at that recess at that point in time when the Judge gave us that time.

[Thereupon the Petitioner rested; there was a brief recess and then the Court deferred ruling upon the

Respondents' Motion for a directed
verdict/dismissal].

Thereupon:

RICHARD FULLER

was called as a witness by the respondents
and, having been first duly sworn, was
examined and testified as follows:

THE COURT: For the record, state your
full name and occupation.

THE WITNESS: Richard S. Fuller, Judge,
retired.

THE COURT: You may proceed.

MR. FOX: Judge, at this point, we
would ask the Court to take judicial
notice of the matters that have been filed
with the respondent's response in this
case, that is the record on appeal, on
direct appeal and other matters, noting
particularly the deendant's Rule 3.850
motion with exhibits attached as filed
in the State Court.

THE COURT: No objection to that?

MR. SHAPIRO: No objection except I haven't received a copy of the response. I was wondering if I could be served with a copy of it.

Thank you.

THE COURT: I will take the notice requested.

MR. FOX: Your Honor, I would like the record to reflect that these matters were provided at the original hearing in this case which I believe was Tuesday and I did provide Mr. Shapiro with a copy of our response as filed including the cover letter of the Court.

* * *

DIRECT EXAMINATION

BY MR. FOX:

Q Judge Fuller, you have stated you are a Judge. Is that with the State

Court?

A Yes, sir.

Q The Eleventh Judicial Circuit here in Miami?

A That is true.

Q Were you so occupied in October of 1976?

A Yes, sir.

Q How long had you been a Judge at that time?

A I came on the Bench in the summer of 1974, and I believe I was transferred to the Criminal Division in December of '75.

Q So, you had been on the Criminal Bench approximately a year at that time in October of '76.

A That is correct.

Q When were you admitted to the Bar?

A 1955.

Q Have you received any training as a

trial Court Judge while you were on the Bench?

A Well, like all judges, we attend the International College of the State Judiciary at the University of Nevada in Reno.

We have a new judges' college which is for all new judges at the University of Florida and also some nineteen or twenty years of practice on the other side of the Bench.

Q Your practice was as a trial lawyer?

A That is true.

Q How many criminal cases have you handled in your career up until October 1976?

A I really couldn't give you an exact number. I inherited a division that was relatively heavy in pending cases that had been handled by Judge Sidney Weaver.

I can only tell you that during the years from '74 to '76 or '77, we were assigned in the neighborhood of 1,200 felony cases per year and my responsibility was to handle the disposition of those cases and I would say that we averaged about seventy-five jury trials per year for the first two or three years.

It dropped some after that when I decided it wasn't worth working from 7:00 in the morning until 9:00 o'clock at night.

Q During the course of your tenure on the Bench, Judge, have you ever suffered any reversals?

A Who hasn't? Yes, I think all of us have been educated by the Appellate Courts at some time or another.

Q Have you received any reversals with regard to penalties?

A No, sir. The only problem I ever had with penalties is that I have made six periods of incarceration as conditions of probation and the Florida Supreme Court said that shouldn't done.

MR. SHAPIRO: Your Honor, I object to this inquiry. I don't primarily see the relevancy.

THE COURT: I think we are concerned with what happened at the sentencing.

MR. FOX: Judge, I would submit that all of the experience of the parties involved, what they perceived and their experience as they applied it to this case is extremely relevant.

THE COURT: We have already had some of it.

Have you finished that or how far would you like to go?

Maybe Mr. Shapiro would like to stipulate to his qualifications and

experience.

MR. SHAPIRO: I have no problem with stipulating to his qualifications as a Judge who presided over criminal cases in the State and his experience, as such.

THE COURT: Is there anything more than that that you would like?

MR. FOX: Then, at this point, the respondent would offer Judge Fuller as an expert witness with regard to his experience on the Bench.

THE COURT: Mr. Shapiro?

MR. SHAPIRO: Your Honor, it depends on what he is questioning him about. I concede that he is an expert in some areas, but I am not willing to stipulate to his general qualifications of an expert in criminal proceedings.

THE COURT: It seems to me it would be relevant to know what he did and why he did it in this particular sentencing and

if these matters that Mr. Shapiro has now developed has some effect--

MR. FOX: Yes, I understand and that is precisely what the respondent is trying to pursue.

THE COURT: Let's go on.

MR. SHAPIRO: For the record, we will now withdraw our objection.

BY MR. FOX:

Q Do you recall the case of State v. Washington for three counts of first degree murder and one count of escape, I think it was?

A Yes, sir.

Q Do you recall on October 6, 1976, you appointed William Tunkey to represent the defendant?

A I think I appointed Mr. Tunkey in one of the cases and then followed up with another appointment in cases where later indictments came in.

Q Yes, Judge, and October 6th was the Meli killing?

A Yes.

Q Did you have any prior knowledge of Mr. Tunkey prior to your appointment of Mr. Tunkey in this case.

A Of course.

Q Could you explain to us what that was?

A Well, I had been asked by Judge Crawford to transfer out of the Civil Division to Criminal.

I recognized upon my transfer that it would be incumbent upon me to learn as rapidly as possible the local criminal bar because it would be my responsibility in some instances to make appointments of counsel where there was a conflict within the Public Defender's office.

I inquired of other judges who had at that time been involved in the

criminal system and Mr. Tunkey had appeared in front of me on a number of cases beforehand and I made appointments of counsel, to be perfectly candid with you, out of the better segment of the trial bar because I was a fellow that was called upon to impose sentences and that any judge who did less than the best in his appointment for private counsel, was making a big mistake.

In this case, I appointed who I felt at that time and still feel are the better part of the criminal bar, Bill Tunkey and fellow named Jack Denaro and a fellow named Roy Black and Mr. Link was, in my opinion, competent to represent the person who had the Public Defender.

That was the basis upon which he was appointed.

Q Did you have an opinion as to Mr. Tunkey's reputation then"

A Bill Tunkey at that time and today has a reputation that I thought was impeccable. He worked hard. He did not ex parte judges, tried his cases as they should be tried and unlike other lawyers, did not argue unless he thought something was wrong or amiss. He was there when he was supposed to be and I wish I could have used him more. But obviously it would not have been proper.

Q Did you have chance to examine the record to refresh your recollection of the present case?

A I have and I hope I have refreshed it sufficiently.

Q Are you familiar with the report of October 6, 1978, of Dr. Jacobson of the Jackson Memorial Hospital Forensic Research Unit?

A I am familiar with the report that was rendered as a result of Judge Klein

in the Magistrate Court and it was given to Judge Tanksley, I believe.

However, I do believe your year is wrong. I believe it was '76.

Q Yes, sir, I am sorry.

A I am and was.

Q You were familiar with it at the time of this case?

A Yes, sir.

Q Prior to December 1, 1976, had this case proceeded in an orderly and prompt fashion?

A I would think so.

Q Is there any reason to question Mr. Tunkey's handling of the case prior to December 1, 1976?

A None whatsoever.

Q I direct your attention then to the plea colloquy on December 1, 1976.

Have you had an opportunity to review that plea colloquy?

A Yes, I have.

THE COURT: It should be clear that we are not inquiring into the propriety of Judge Fuller's actions at that time.

MR. FOX: Yes, I understand.

BY MR. FOX:

Q With regard to the plea colloquy, Judge Fuller, do you recall having reviewed that plea colloquy as to whose idea it was to plead guilty?

A I reviewed the entire matter that was given to me to review and yes, I do.

Q Do you have an opinion as to whose idea it was to plead guilty?

A Yes, there was a lot of conversation at the first part of the plea between Mr. Tunkey and the Court and later with Mr. Washington and the Court as to who wanted to do what.

I was impressed with the feeling

that Mr. Washington wanted to get this off his chest, that he was very concerned about his conduct and that he had gone outside of his lawyer's instructions to interview with police officers and give them statements that were obviously inculpatory and that his pleas were made for whatever purpose he deemed them to be made and not necessarily with Mr. Tunkey's approval or even recommendation.

As a result of that, and it doesn't happen to a trial Judge very often, I was very concerned that Mr. Washington understood where he was and where I was going and the possible consequences of a plea and hence, my conversation with him was probably somewhat longer than what they might normally be.

Q Had you informed --

MR. SHAPIRO: I object to this line of

inquiry. It is irrelevant to the pleadings before this Court which is the sentencing and not the presentence colloquy.

THE COURT: This is preliminary but let us move on to the sentencing.

MR. FOX: Your Honor, if I may, there is one question that I would like to ask and this is my witness on direct examination to the defendant's claim in this case particularly one that was directed particularly to Judge Fuller.

BY MR. FOX:

Q I would like to ask you at the point of the plea on December 1, 1976, had you formed any opinion as to the appropriate penalty in this case?

A Absolutely not.

Q Judge, were you presentenced with and were you familiar with the demeanor of the defendant during the plea colloquy and the sentencing proceeding?

A Yes, sir, I had been involved in a number of capital cases previously. A trial Judge does not look in these things in an abstract type of fashion.

I may have been called upon to impose the most seriously penalty in the world and I didn't look at it in a light vein at all. I was very concerned that this man knew what he was doing.

I was concerned about his background, the things he told me about his employment and his family and it was terrible important because I had to base a decision as to whether or not he knew the consequences of his plea.

I didn't look at this in any other vein except that David Washington knew what was going on. He had been one of the most courteous people I had ever had in my courtroom and I didn't want him to be lulled into some sort of a sense of

security and that is why I told him I might give him a death penalty as I had said to others that I had handled up to that date.

Q You were familiar with the background and problems of the defendant?

A I was familiar with those matters that Mr. Washington wanted to tell me about at the time of this plea and those matters that were contained in those statements.

I was interested in them because I had to form an opinion as to his voluntariness and knowingly giving the plea.

Q Judge, the sentencing proceeding in this case was set for December 6, 1976, which is about five days later.

Is there anything unusual about that sort of schedule?

A It is a little longer than what has been my decision sitting in court normally.

When there is a finding of guilt, we normally go right into a sentencing unless it is something like 7:00 or 8:00 o'clock at night. Then we would go to next day.

So, it was unusual in that there was more time given between the time of the plea and the time of the sentencing hearing.

Q Now, with respect to the sentencing proceeding itself, do you recall anything particularly with regard to the manner and conduct of Mr. Tunkey during the proceeding?

A Yes, sir.

Q Could you tell us what that was?

A Yes, as I indicated, it is an unusual circumstances when somebody gets up and pleads guilty to three first degree murders and waives a hearing or recommendation

by a jury. That had never happened to be before and I don't know of any judge who had ever had that experience.

I was truly in the position of having the power of life or death over somebody without a jury being involved and it was and it is a very sobering experience. I can assure you of that.

The case was well tried. Mr. Washington was his typical self during the course of it. I was left with the impression that he wanted to get this behind him.

Q Do you recall Mr. Tunkey's presentation and arguments to you in the case?

A I don't recall them word for word, but I know I was certainly satisfied that he was doing his best in his very friendly, amicable fashion to have me give this young man life rather than death.

Q Did you consider Mr. Tunkey's

presentation effective?

A Yes, I did.

Q In your sentencing order, Judge, you found a vast array of aggravating circumstances in this case.

Do you recall those aggravating circumstances?

A I recall that there were a lot of them. I recall that they were well planned, well thought out violent homicides and even with Bill Tunkey's pleasant smile and graciousness to the Court and all other things, it wasn't enough to take away from the seriousness of the crime.

So, I could tell you yes, the number of robberies involved, a question of burglarizing the house, breaking and entering and a various number of aggravating circumstances.

Q Would you characterize the circumstances as moderate, light, overwhelming?

[Objection overruled]

THE WITNESS: I am sorry. I forgot the question.

BY MR. FOX:

Q How would characterize the array of aggravating circumstances in this case, in your experience?

A They were vast. It has been my experience in handling the Opa Locka murders and others in this community and I would say these murders were as bad as any I have had, no lack of concern for people and their dignity. The manner in which these people were shot, stabbed or treated, it was overwhelmingly tragic.

Q In your sentencing order, Judge, you find non-statutory mitigation, but it states that there was insufficient

mitigation.

Can you explain that?

A As I remember the facts, Mr. Fox, of the enumerated group of mitigating circumstances, there were none and maybe my English wasn't appropriate because I wrote my own orders and I didn't ask the State Attorney to prepare these, I had considered his age, his family, the things he told me, his candor with the Court and I considered the authority, that his admission had been given and to me anybody that would get up in public and say they have done something wrong, gets a lot of stripes on his side.

I think that is the first step and I was particularly pleased that he took this position, although not enumerated by the Court, but it didn't add enough weight from the position where I thought I should be,

to impose the death penalty which, of course, I did not get any pleasure from.

It was an awful case. He was a very pleasant young man but after reviewing the record as I did last night, I would impose the same sentence today.

Q Judge, I would show you Exhibit 16 and 17, which the State filed in the trial court in this case, these being the psychological reports of Dr. Barnard and David Lane and ask you if you had an opportunity to examine these reports?

A Yes, I have had the opportunity to examine them as well as other exhibits that were attached from lay individuals.

Q Referring to the witnesses' statements, Exhibits 2 through 15--

A I have read those, also.

Q And you had an opportunity to review this case?

A Yes.

Q Judge Fuller, I would ask you, in your experience today, if those matters had been presented to you and this case had been presented to you exactly as it is presented here, including these exhibits, assuming all of these exhibits are absolutely correct and not subject to any change from cross examination or anything else, would these exhibits have in any way affected your determination and your judgment as reflected in your order in this case?

[Objection overruled]

BY MR. FOX:

Q Do you understand the question?

A Yes, sir, were I to have the folks that were good enough to give affidavits before me in court and heard their testimony and it was consistent with the contents of their affidavits and were these people to have been the best witnesses that I have ever seen and were they to be the most be-

lievable people that I have ever seen and I assessed them as the best from a demeanor point of view and everything else, that information would not have changed my opinion then nor would it have changed my sentencing were I to give it today.

Inasmuch as what David Washington told me himself at the time of his plea or at the time of the sentencing, the economic problems that he had, all about dollars and cents, problems with his family, perhaps problems with his step-father, most people who have found themselves in those circumstances, unfortunately have a rather depressing background.

I recognized that and I had a great deal of thought about David Washington, but the extensive amount of circumstances in this case, and six that are of an aggravating nature just outweighed everything else

and I don't think any other judge that had the same facts in front of him today or at the time would have made a different decision.

Q Do you have any doubts whether the death penalty was appropriate?

A No, sir, no doubt at all.

Q Do you have any doubts as to whether your judgment was correct in this case?

A Thank you, I appreciate your saying "in this case."

I have labored over this and it is, in fact, correct if in fact, there is a death penalty, then this is a death penalty case.

MR. FOX: No further questions.

CROSS EXAMINATION

BY MR. SHAPIRO:

Q Good afternoon, Judge Fuller. My name is Richard Shapiro and I represent

the petitioner, David Washington.

A Nice to meet you.

Q It is nice to meet you, Judge.

You did mention the seriousness of a capital case.

Would you view a capital case the most serious kind of proceeding in a criminal case in terms of ultimate punishment?

A I don't think we can get into too great an academic argument about that. It is kind of final.

Q With respect to the handling of a capital case, would you describe what you think an attorney handling a capital case should do in presenting the case for presentation at a sentencing hearing?

A I haven't found a case of the thousands I have handled that have been handled in the same fashion.

Roy Black would spend a lot of time

on one aspect and not on another because he is better on one part than another.

I have a hard time telling you what I would expect someone to do under certain circumstances because each case is different.

But I found nothing about what Bill Tunkey did that was inconsistent with what I thought should be done.

Q Would you say a thorough pre-sentencing investigation of the person's background is an important feature of the sentencing?

A Yes, and a lot of that has to do with the relationship of the individual and his attorney.

In this case, there was another lawyer with Mr. Tunkey, who was Mr. Pollack who was out of the same firm who, I understand, the family wanted to be there.

This is almost when it came up for plea when Bill Tunkey came before the Court and said he was trying to steer his client in one direction and he kept going off in another direction and this is what is so unusual about this, that every effort had been made by competent counsel to restrict the communications of his client to the police and in spite of that he went ahead and did it anyhow. This is not a usual thing.

Q I recognize it is unusual, but in terms of preparing and in making sure of the most informative decision about sentencing, would you say that it is absolutely essential that an attorney representing a defendant in a capital case conduct a thorough pre-trial investigation of all the circumstances of the offense and of the offender?

A I don't want you to place me in the position of an advocate which you are doing. All I am saying to you is that Mr. Tunkey related to me in the hearing, although he suggested certain things be done and not be done which were contrary to what Mr. Washington did and did not, in fact, do, when Bill Tunkey said not to plead guilty, this was the most unusual part.

Q What I am trying to get at, in terms of making the sentencing decision whether a person should live or die, isn't it your practice to want to be informed of all circumstances of the offense and the offender so you are making a reliable decision about the defendant's [fate]?

A I think all judges want to have as much information as is available so as to make a considered intelligent opinion.

That doesn't mean that I have to know everything about everything involving every case. That could never happen.

So, I can't say to you that because a lawyer doesn't talk to a grandmother that that is fatal and that is what you want me to say by the way you are phrasing your question on complete family background.

I can't say that. All I can say to you is that I was provided with sufficient information to make an intelligent decision.

The information was supplied in good part by the defendant under circumstances that were quite pleasant and quite cooperative.

Q Maybe I can ask you in a different way.

If you were called upon to represent a defendant in a capital case, would you feel it was part of your responsibility

to effectively represent this person, to conduct a thorough investigation into the background and circumstances of the individual and the offense?

A I would satisfy myself that I knew sufficiently about the case to proceed and I would also tell you that were I to represent someone who did not want my representation or did not want to follow the advice that I gave him, I probably would not be involved in the case.

Q Did you have any discussions with Bill Tunkey regarding the investigation he had undertaken?

A You have the transcript.

Q I am talking about any off the record discussions.

A I, a long time ago, learned that you do not have off the record discussions with lawyers and off the record discussions were not held in my courtroom and lawyers

were not welcome in my chambers. I did not discuss pleas.

Q In that course, you would not want to conduct something in a capital proceeding that was off the record?

A I don't know what you mean by "conduct."

Q You would never have had a discussion with an attorney in a matter that is as important as a capital case off the record?

A You know, I can't tell you if something is passed on the way to the kitchen or if some comment is made.

All I can tell you is as it related to the substance of the case, my courtroom is run on the record and I think I discussed that with Mr. Washington and Mr. Tunkey and Mr. Pollack in part of the conversation regarding the plea to be certain that nobody other than in the

courtroom had knowledge of what had happened in the courtroom had taken place before.

Q Is your assessment of the testimony itself, that you viewed the crimes as so serious that there was no mitigating circumstances that would have led you to impose the sentence you imposed?

As I understand your testimony on direct examination, the crimes were so serious that there was nothing in mitigation that would have led you to impose a different punishment?

A I can't say that. I can't imaging what might have been said, but I know I sat there for quite a long time and looked at the photos and the weapon and I knew that I knew about the facts that David Washington wanted me to know about that he had related to me at some length relating to his family problems and economic

problems.

But the Supreme Court said it is not an addition-subtraction issue.

Q I am just trying to clarify your testimony on direct.

As I recall your testimony and if it is a misstatement, please tell me, that these crimes were so serious that you could not conceive of any facts in mitigation that could have led to a life in prison sentence.

A I said I didn't find any facts that were sufficient in mitigation to have offset the positive findings of aggravating circumstances.

There were something like five or six out of the eight possible and you and I are aware that one aggravating and no mitigating would be technically sufficient for a trial Judge to impose a death penalty.

Q Are there any factors that you could have thought of in mitigation that would have led you to impose a different punishment in this case?

A There could have been a doctor testifying that he was insane. But there was no such evidence.

As a matter of fact, the evidence that he was quite sane.

Q Where was that evidence?

A Dr. Jacobson's letter on the evaluation he did.

Q And you reviewed that prior to the sentence?

A That came to me as soon as it was out from the Magistrate. It was ordered by either Judge Klein or Judge Tanksley and it was given to me.

Q And it is a standard procedure to make this available to defense counsel?

A Of course, whatever is in the

court file.

Q Do you recall discussing with Mr. Tunkey the contents of Dr. Jacobson's report?

A No, sir, I sure don't.

Q Do you recall advising Mr. Tunkey that you were considering Dr. Jacobson's report in formulating your decision?

[Objection overruled].

A Everything that the Court considered in the imposition of the sentence in this case was available to counsel.

I think I filed either an affidavit with the Supreme Court of Florida or included it in the order or in the findings that I had made.

I considered nothing about this case that was not available to counsel.

Q Besides the insanity of the defendant, what other factors in mitigation, if presented, would have led you to impose

a different sentence?

A You got five or six of them by statute. If I had evidence about those, I would have made my finding on that.

I had no such evidence and didn't do it and I don't know of any such evidence to this date that relates to those.

Q Did you know at the time of the sentencing that David Leroy Washington had been abused when he was a child?

A I am not sure whether that was in the statement he made to me at the time of the plea.

If it was, I knew about it. If it was not, I had no other independent knowledge.

So, it would have had to come from the affidavit that I was asked to review and give my thoughts on which I have.

Q Did you have any information at the time of the sentencing that Mr. Washington

had been shifted back and forth between his grandmother and his mother when he was a child?

A I would have to read line for line and if it is not in the transcript of my communications with Mr. Washington and his counsel in open court, I did not know it and the best way I can tell you, until I read the affidavits last night.

I have the same opinion. It hasn't changed my opinion and it wouldn't have changed my opinion at the time.

Q And there is nothing about the relationship between Mr. Washington and his childhood and the circumstances surrounding the time that would, in any way, affect your judgment as to the propriety of the death penalty?

A That is true.

Q So then, the only factor that would have changed your mind in this case with

respect to the propriety of the death penalty was the fact that he was insane at the time?

A No, that is not what I said. I said any of the other enumerated factors in the statute that are mitigating circumstances and anything else I could have heard, because the trial Judge is not limited to mitigating factors.

I can't think of any, but I wouldn't close the door. The Supreme Court said we cannot close the door. We have to hear everything in mitigation.

MR. SHAPIRO: May I have a moment, your Honor?

THE COURT: I have information that Mr. Washington has arrived at the airport and may be on his way here.

MR. SHAPIRO: Fine.

BY MR. SHAPIRO:

Q And you have had an opportunity to review the report of Dr. Lane and Dr. Barnard?

A Yes, sir.

Q And you testified that none of this information would have in any changed your opinion as to the presentation or absence of statutory mitigating circumstances?

A That wasn't what I testified to.

Q Well, is it your testimony that none of this information would have in any changed--

A I said my testimony, sir, was had I had that information presented to me at the hearing, had it come from the most favorable witnesses from a demeanor's point of view or from physicians that I had appointed to make independent studies, that that information would not have

changed my opinion that this was a death penalty case.

Can I go a little further? I would like to say to you that I looked at that case very gravely, that it was the first time that I had imposed the death penalty and I had a number of cases previously that I had not imposed the death penalty and that I was well aware at the time, as I am today, that a basis for setting aside of a case could be incompetency of counsel and that I, myself, on direction of the Florida Supreme Court, handled a case where I set aside a death case because of incompetency of counsel.

I do not like to try a case twice and I was trying to do everything I could to make sure this case was tried fairly and I am not patting myself on the back because no judge that imposes a death

penalty can do that, but I watched the lawyers to make sure David Leroy Washington had every shot to not have to go to the electric chair.

Q Judge Fuller, with respect to the mitigating circumstances, would the presence of non-statutory mitigating circumstances have affected your judgment?

A There was some that were non-statutory that did affect my judgment.

The Supreme Court said we could consider anything. I am just telling you that what I heard did not affect my judgment and that the affidavits would not change my mind at all.

Q Are there any mitigating factors that could have changed your opinion?

A How do I know? I wasn't an advocate. I was a Judge. I wasn't searching for facts pro and con.

I was just trying to get everything.

In conclusion, I wasn't trying to do the defendant's lawyer's job or the State's job.

Q I am asking you if there was anything in terms of non-mitigating circumstances--

[Objection sustained].

BY MR. SHAPIRO:

Q Judge, I assume you are familiar with the State vs. Dixon holding that a death sentence is not reached by mere numerical weighing of aggravating and mitigating circumstances, but by the assessment of the totality of circumstances.

A That is why the necessity of the order of findings.

Q Yes, right, and within that totality of circumstances, isn't it true that the testimony and demeanor of the witnesses would be essential to a determination, given a new totality of circumstances,

that that sentence is appropriate or not?

A I don't think that is an appropriate equation to solve it all.

A lot of time we get pre-sentence investigations, you know, that I don't have a chance to review the people that the probation officer has spoken to and they weigh heavily. Sometimes pre-sentence investigations do.

However, it is a purely discretionary matter with the Court. I have ordered them on occasion and certainly I wouldn't have had a chance to review, to evaluate the demeanor of those witnesses but yet I would have considered them.

So, I don't think what you said necessarily follows.

Q Well, properly under the law of the State of Florida, isn't it a responsibility in determining whether a death sentence is appropriate or not, to review the

totality of the circumstances including all of the witnesses that the defendant chooses to present in support of his character, the situation of the offender and the circumstances of the offense?

A We get a number of cases where they are not available and reports come in and we get a number of cases in the pre-sentencing investigation where there is all kinds of letters from people that responded regarding the good character of the defendant. What else can the Judge do?

The Judge considers those things. He attaches to those people great credibility because they are not there and it is only fair to do it that way. How else can it be done?

So, the fact that the witnesses that you have gotten affidavits from were not there, you know, for the purposes of this hearing, I say that they are the greatest

people in the world, but it would not have made any difference.

This is a capital case and I could put all those things in a great big thing in front of me, write them all down and do all kinds of stuff, but it comes out the same. He has got a terrible background. I felt terrible that people in our community have to live like he did. There were bad problems with his family, supporting his family, but that wasn't enough of a mitigating circumstance to the extent that it would outweigh the aggravating circumstances that I enumerated which must have been five or six in each case. These were heinous crimes.

Q Do you know that to properly meet the mandate of State vs. Dixon, that mitigating and all of the factors should be used in reaching an informed sentencing

decision as required by Dixon.

I considered the things the Court had. I went outside and considered everything that I possibly could.

It would have been easier for me to give this man life instead of the chair, much easier.

Q Based on what you read, is it your assessment of the documents that they are cumulative of what you heard in court?

A No, sir, I think there is information in those that I did not have in court. But I think the additional information doesn't change the outcome. I don't want these things to come back.

Q You feel that the death penalty was mandated in this case by the nature of the crime?

A I think after I heard all of the evidence in open court that was presented

by this young man, the cross examination by his counsel, everything both sides put on, I didn't have any other choice.

MR. SHAPIRO: All right. Thank you, your Honor.

[Gardner discussion omitted].

[Recess taken after which the following proceedings were had:]

THE COURT: Have you had an opportunity to talk to Mr. Washington?

MR. SHAPIRO: Yes, I have just a few questions, a series of three or four questions relating to an issue that came up during Judge Fuller's testimony.

[Gardner discussion omitted].

Thereupon:

DAVID LEROY WASHINGTON

was called as a witness by the petitioner and, having been first duly sworn, was

examined and testified as follows:

DIRECT EXAMINATION

BY MR. SHAPIRO:

Q State your full name for the record.

A My name is David Leroy Washington.

Q Where are you presently incarcerated?

A Florida State Prison on Death Row.

Q Now, going back to the time of your guilty plea proceedings and sentencing hearing in 1976, do you recall the proceedings at that time?

A Yes, I do vaguely, but I can recall most of it.

Q Do you recall having any discussions with Mr. Tunkey about the presentation of your case at the sentencing hearing?

A I can't recall.

Q Do you recall discussing a report prepared by a Dr. Jacobson with Mr. Tunkey?

A No, I don't remember discussing any

kind of report with Mr. Jacobson.

I am not saying I didn't, but I don't remember discussing it.

Q Do you recall Mr. Tunkey ever discussing with you a psychiatric report which concluded that you were sane at the time of the offense and competent to stand trial?

A Yes, I do.

Q You recall him discussing that report with you?

A I recall standing in front of Mr. Fuller saying I was sane. I don't recall discussing any report.

Q Any report with Mr. Tunkey?

A Right.

Q But you recall standing in front of Judge Fuller?

A Yes, sir.

Q I am talking about a discussion you

might have had about a written report prepared by a Dr. Jacobson.

A No, I don't remember.

MR. SHAPIRO: Thank you. No further questions.

THE COURT: Cross examination.

MR. FOX: No, your Honor, I have no questions.

[Gardner discussion omitted].

[EXCERPT OF] MOTION FOR REHEARING AND/OR
NEW TRIAL (U.S. DIST. CT.)

Now comes the petitioner, DAVID LEROY WASHINGTON, through counsel and moves this Court, pursuant to Federal Rules of Civil Procedure 52(b) and 59, for a rehearing of the order denying his petition for writ of habeas corpus, filed on April 15, 1981, and for a further evidentiary hearing in the above-captioned matter.

In Support of this motion, counsel asserts the following:

1. Subsequent to the signing of a Death Warrant by the Governor of Florida on March 13, 1981, the petitioner's counsel, in preparation for an evidentiary hearing in state or federal court, sought to have Dr. Jamal Abdullah Amin, a black psychiatrist in Tallahassee, Florida,

examine the petitioner.

2. Counsel sought Dr. Amin's assistance for several reasons. First, while a psychiatric report had been prepared by Dr. George Barnard, counsel was concerned that all of the relevant facts and conclusions might not have been properly developed at this interview, because David Washington is black and Dr. George Barnard is white and because their socio-cultural backgrounds were very different. Therefore, counsel sought to ensure, in a matter of consequence, where the petitioner's life is at stake, that a sensitive psychiatric interview was not hampered at all by the different races or backgrounds of the participants. This concern would have been obviated with Dr. Amin as the examining psychiatrist, since he is, to Dr. Amin's knowledge, the

only black psychiatrist in Florida.

Second, Dr. Amin had a very similar socio-cultural background to David Washington. Consequently, this would allow for the appropriate rapport at an interview that would ensure, as much as humanly possible, that a correct picture of Mr. Washington's mental state at the time of the crimes would be presented to the state or federal judge who might preside at an evidentiary hearing.

Third, Dr. Amin - a graduate of Harvard Medical School and the Harvard School of Public Health (See resume, Attachment A to this Motion) - has excellent credentials and would make an extremely credible witness in his area of expertise.

3. Unfortunately, Dr. Amin was unavailable to conduct an examination until mid-April 1981.

4. On April 7, 1981, this Court granted petitioner's application for stay of execution. At this time, the undersigned counsel had already started preparations for Dr. Amin to visit the petitioner at Florida State Prison within the next week to ten (10) days.

5. An evidentiary hearing was thereafter scheduled by this Court for April 10, 1981, at 1:30 p.m.. Petitioner was brought to this hearing from Florida Starke Prison (Starke, Florida). The immediate scheduling of the hearing foreclosed any opportunity for the petitioner to present any testimony or even a psychiatric report from Dr. Amin, since Dr. Amin was unable to interview the petitioner prior to April 10, 1981.

6. At this hearing, petitioner's counsel objected to the use of affidavits, rather

than live testimony, and advised the Court that there were other witnesses he would present in petitioner's behalf at an evidentiary hearing where live testimony could be introduced.

7. Although Dr. Amin was available to see petitioner during the week of April 13th, the petitioner was not returned to Florida State Prison from Miami until on or about April 15, 1981. On or about April 14, 1981, petitioner's counsel arranged for Dr. Amin to interview Mr. Washington on April 16, 1981.

* * *

SS: Richard E. Shapiro

[EXCERPT OF ATTACHMENTS TO MOTION FOR
NEW TRIAL]

TO: Richard Shapiro, Attorney at Law
Southern Prisoners Defense Com-
mittee
344 Camp Street, Suite 708
New Orleans, Louisiana 70130

FROM: Jamal A. Amin, M.D.

RE: Mr. David Washington
Independent Pyschiatric Evaluation

DATE OF
REPORT: April 20, 1981

PURPOSE AND METHODOLOGY

Mr. David Washington is a 31-year-old Black male (date of birth, 12/13/49) seen in psychiatric evaluation at Florida State Prison in order to offer my professional opinion concerning his past and present mental status, particularly his state of mind prior to and during a ten day period in 1976 during which he reportedly committed three murders. Particular emphasis was placed upon socio-cultural factors which had not been reached in prior reports.

In addition to interviewing Mr. Washington an extensive review was done of Mr. Washington's legal records, records of past psychiatric and psychological evaluations as well as reports from relatives and friends.

CURRENT SITUATION

Mr. Washington is currently incarcerated on Death Row at Florida State Prison. He is not being treated for any specific physical or mental condition. He spends most of his time reading and writing to numerous correspondents. He searches news accounts for reports of persons in stressful situations and writes to give them encouragement. He has few visitors although both he and his family report that it is economics rather than lack of concern that prevents their visiting. He is perceived by prison officials as a good and quiet prisoner.

SIGNIFICANT HISTORY

Mr. Washington is the oldest seven children raised in a chaotic, segregated, poverty-ridden environment. The children had various fathers. His childhood was plagued by physical abuse, particularly from his step-father. I observed on Mr. Washington's back and thighs scars which are consistent with severe lacerations from beatings. Most of his youth he was raised by his grandmother. There was little stability in the home situation because of frequent moves and his temporary returns to the household of his mother and a series of stepfathers. Because of his thinness, he was nicknamed "pee-wee," an appellation he carries to this day. Mr. Washington began to work at a young age to contribute to the household expenses, particularly to assist his grandmother and younger siblings. School

attendance was erratic at best. Positive male identity figures were particularly lacking. As the oldest child, Mr. Washington himself was viewed by his siblings as a father figure with enormous psychological responsibility for which he was ill-equipped.

One of the step-fathers had sexual relations with one of Mr. Washington's sisters, an event which deeply disturbed Mr. Washington. Physical abuse of the children and their mother occurred frequently. Mr. Washington related that on at least one occasion his step-father beat him sporadically for an entire night, threatening worse treatment should the child dare to move when the step-father dozed into a drunken stupor. At least one sister required medical attention as the result of severe beatings. There was constant alcohol abuse among the other males of the family: grandfather, step-fathers, and brothers.

Despite the instability and acts of violence against him, there are no reports of prior crimes of violence nor of any drug or alcohol use by Mr. Washington, normal outlets under such stress. He twice attempted to enter the military but failed the entrance examination.

Mr. Washington perceives his only positive accomplishments as his skill at basketball and at playing several musical instruments. One of his dreams had been to attend Florida A & M University, a predominantly Black school, to join the Marching 100 (the school's renown marching

band) and to play in the Orange Blossom Classic, an annual event significant to thousands of Florida's Black citizens. Feeling his dream impossible due to his poverty and lack of education, he once stole a band uniform and had himself photographed wearing it, the closest to his goal he felt he would ever reach.

He also dreamed of visiting art galleries, museums, and foreign countries, but felt his economic and social status made these dreams unfulfillable.

Mr. Washington was normally employed. He attended church regularly and participated in the choir.

In late 1974 his job was terminated because of the recession and his lack of seniority. He received unemployment benefits which eventually terminated. He was unable to find other employment. By September 1976, his wife was about to give birth to a second child. Mr. Washington was still unable to find work. He managed to borrow money from neighbors and relatives but not enough to support himself or his family. The utilities in his home were turned off because of delinquent accounts. He and his family were living literally hand-to-mouth, battling for survival.

Mr. Washington experienced an increasing and overwhelming sense of powerlessness -- literal impotence -- and lack of control over life. He entered a series of illicit affairs, resulting in the conception and birth of several children. These liaisons

were his desperate attempts to prove and maintain his manhood. Perhaps because of his refined features, it was not uncommon for him to be approached by homosexual men, advances which threatened him, but which he repelled. During this period, his identify depended upon his ability to be successful with women. Mr. Washington also found some solace in his church activities.

FACTS OF THE CRIMES

1. Rev. Pridgen. A day or two before the last encounter with Rev. Pridgen, a homosexual Black minister, Mr. Washington had engaged in a sexual act with Rev. Pridgen. Money was exchanged. Disgusted with himself and Rev. Pridgen, Mr. Washington nevertheless returned to the minister's house to engage in sexual acts and to rob him. In the midst of this sexual act, Mr. Washington focused upon the religious pictures in Rev. Pridgen's bedroom and began frantically to stab him. He ransacked the apartment looking for money and then left.

2. Mrs. Birk. Mr. Washington had often sold stolen property to Mrs. Birk and her husband. He suspected they would have a large amount of cash in their home. Intending a robbery, he expected to find Mrs. Birk alone and was surprised to find three other women there as well. He had not intended to harm anyone, panicked when Mrs. Birk apparently moved towards a telephone, and he began stabbing and shooting everyone.

3. Mr. Meli. Intending to net more money, Mr. Washington contacted Mr. Meli about buying Mr. Meli's car. He took Mr. Meli's car, sold it, and returned to his home where Mr. Washington's brother and a friend were holding Mr. Meli. They reported that a struggle with Mr. Meli had occurred. Mr. Washington said that the two others left and that he then stabbed Mr. Meli to death. He became aware of his actions only when Mr. Meli began reciting the Lord's Prayer. Two days later Mr. Washington surrendered to police.

MENTAL STATUS EXAMINATION

Generally friendly. Good rapport. Appropriately dressed in neat prison clothing. Normal facial expressions. Poor eye contact consistent with feelings of shame. His speech was productive. Thought content examination revealed no overt thought disorder at the time of the interview.

He was oriented to time, place, person, and situations and had good contact with reality. Recent memory was intact but remote memory appeared somewhat impaired. He appears to be of average intelligence. He wept openly during parts of the interview. He repeatedly expressed his sorrow and regret about his actions and his affect was consistent with those feelings. His mood was one of despair and worthlessness.

FORMULATIONS AND IMPRESSIONS

David Washington's life until the time

of these crimes was marked by poverty, physical abuse, and instability. He had no positive male identification figures. He did not resort to use of drugs or alcohol as outlets for tension. He did not commit crimes of violence. He romanticized people he viewed as successful. Church was important to him. The stress he faced in September of 1976 was intolerable to him: no work, no income, utilities turned off, wife giving birth, taunts from relatives. His only perceived way of proving his manhood was by fathering children. Although I am aware that Mr. Washington's account to me of the first crime differs in some ways from his prior court statements, nevertheless, it is my opinion that his account to me is the accurate one. In my professional opinion, Mr. Washington has been unwilling to admit -- even to himself -- any prior sexual involvement with Rev. Pridgen. To Mr. Washington that involvement was disgusting, disgraceful, unredeemable, and totally ego-shattering. Due to our similar socio-cultural backgrounds, I was able, carefully, to coax these admissions from him. He perceived that encounter as destroying his last remaining vestiges of ego strength. While unconfirmed, I strongly suspect that Mr. Washington had been the victim of a violent homosexual attack, probably during his only other prison commitment (for breaking and entering) at the age of 18. It was in many respects easier for him to acknowledge responsibility for the murders than to acknowledge this ego-shattering, albeit temporary, involvement.

At the time of the first crime, Mr.

Washington suffered an overwhelming homosexual panic which triggered a violent dissociative hysteria. He acted out his rage, protesting the destruction of himself and his idealized image: the church leader who was a homosexual. Ministers in the Black community are people of enormous status. Experiencing overwhelming mental and emotional stress, Mr. Washington could not tolerate seeing the flaws in his image. His reality became to him intolerable.

This episode began a 7 - 14 day violent hysterical, dissociative reaction, characterized by an inability to resist wrongful images. Although at some level he knew they were wrong, he felt internally compelled to commit these acts. He experienced uncontrollable rage and subsequent amnesia for detail. These actions were caused by extreme emotional and mental duress with which he was incapable of coping.

Mr. Washington experienced a syndrome similar to battle fatigue, commonly called shell shock. Sufficient stress can produce this aberrant behavior in otherwise normal people. There is an extreme vulnerability to psychotic acting out during which time there is a temporary absence of usual human sensitivities.

Mr. Washington is a man of average intelligence and of non-violent history. It is easily discernible that all three of these crimes were stupid and senseless, totally inconsistent with his prior or subsequent conduct. These were senseless--

but powerful and some what cathartic acts -- during which his normal consciousness was displaced by the stresses which themselves became manifest. The stupidity of crimes is consistent with his being totally out of control and wanting to be stopped. He did not flee the area and he surrendered to police.

It should be noted that I had difficulty believing Mr. Washington's account of the third crime and I believe that he was protecting his brother in his accounts to me.

CONCLUSION

Mr. Washington's early life was chaotic, fraught with economic deprivation, physical abuse and violence toward him. He has no prior reports of violent crimes.

At the time of these crimes, Mr. Washington knew right from wrong but was totally unable to conform his conduct to the requirements of law due to psychotic disturbance. He suffered extreme emotional and mental distress which resulted in a violent hysterical disassociative reaction.

At the time of this interview, Mr. Washington was remorseful and sorrowful. He wept openly about the acts he has committed.

Respectfully submitted,

Jamal A. Amin, M.D.

[EXCERPT OF] ORDER DENYING MOTION FOR
REHEARING OR NEW TRIAL (U.S.D.Ct.)

THE ABOVE CAUSE is before the Court on petitioner's motion for a rehearing or new trial under Rules 52(b) and 59, Fed. R.Civ.P.

Petitioner's motion is predicated on the psychiatric report of Dr. Jamal Abdullah Amin who examined petitioner on April 16, 1981 and whose report concludes that events in Washington's background and in the period immediately preceding the first murder triggered a

. . . 7-14 day violent hysterical, dissociative reaction, characterized by an inability to resist wrongful images. Although at some level he knew they were wrong, he felt internally compelled to commit these acts. He experienced uncontrollable rage and subsequent amnesia for detail. These actions were caused by extreme emotional and mental duress with which he was incapable of coping. . . . At the time of these crimes, Mr. Washington knew right from

wrong but was totally unable to conform his conduct to the requirements of law due to psychotic disturbance. He suffered extreme emotional and mental distress which resulted in a violent hysterical dissociative reaction.

The significance of the report is that it provides the first indication that evidence may exist which shows that at the time of the offenses, defendant was under the influence of extreme mental or emotional disturbance or that he was unable to conform his conduct to the requirements of law. These factors are within subsections (b) and (f) of the mitigating circumstances set forth in the death penalty statute, Fla.Stat. Ann. §921.141(6).

Despite the submission of this most recent report, I nonetheless find there is insufficient basis to conclude that prejudice flows from counsel's failure to require psychiatric investigation of Mr.

Washington prior to sentencing. Lovett v. Florida, 627 F.2d 706, 710 (5th Cir. 1979); Davis v. Alabama, 596 F.2d 1214, 1221-23 (5th Cir. 1979) vacated as moot, 446 U.S. 903, on remand vacated, 623 F.2d 366 (5th Cir. 1980). I base this finding on the following facts contained in the record to date:

(a) Dr. Amin's conclusions appear to be largely premised on statements only recently made by Washington, including his admission as to a prior homosexual incident with Reverend Pridgen, the first murder victim. This admission had not been made in 1976, and it does not appear that psychiatric evaluation prior to or at a time closer to sentencing would have revealed this information.

(b) Although both Dr. Amin's background and report are impressive, he reaches conclusions which are directly contrary to those of Dr. Jacobson in October, 1976, Psychologist Lane in March, 1980, and Psychiatrist Barnard in May, 1980.

Counsel's performance must be evaluated on the basis of information which would

reasonably have been available at the time of sentencing if he had made an investigation of Washington's background. I find there is insufficient basis to conclude that findings consistent with Dr. Amin's report would have been available to counsel if an independent psychiatric report had been obtained in 1976. I believe Dr. Amin's report must be evaluated in light of the often quoted reminder that an allegation of counsel's ineffectiveness is not to be judged by hindsight. Lovett v. Florida, supra at 708; Herring v. Estelle, 491 F.2d 125, 127 (5th Cir. 1974).

Having reviewed Dr. Amin's report, and based on the conclusions set forth above, it is

ORDERED AND ADJUDGED that the motion for rehearing or new trial is DENIED.

DONE AND ORDERED at Miami, Florida,

[R98]

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this 28th day of April, 1981.

COPIES FURNISHED:

Calvin Fox, Esq.

Richard Shapiro, Esq.

UNITED STATES DISTRICT JUDGE

[EXCERPT OF] NOTICE OF APPEAL
(U.S.D.Ct.)

COMES NOW, petitioner, DAVID
LEROY WASHINGTON, in the above-captioned
proceeding and hereby notices his appeal
from the order of the District Court on
April 15, 1981, denying the relief
requested in his petition for a writ of
habeas corpus.

APRIL 24, 1981 RICHARD E. SHAPIRO
344 CAMP STREET - SUITE 708
NEW ORLEANS, LA 70130
(504) 581-3647

[EXCERPT OF]: NOTICE OF APPEAL
(U.S.D.Ct.)

NOTICE IS HEREBY GIVEN that the Respondents, CHARLES STRICKLAND, LOUIE L. WAINWRIGHT AND JIM SMITH, Attorney General, their undersigned attorney, hereby appeal to the United States Court of Appeals for the Fifth Circuit from the Order entered herein on the 15th day of April 1981 and filed on the 15th day of April 1981, and rendered final on April 28, 1981, when the trial court granted a certificate of probable cause and denied the Petitioner's Motion for Rehearing or New Trial.

RESPECTFULLY SUBMITTED, on this 21st day of May, 1981 at Miami, Dade County, Florida.

JIM SMITH
Attorney General

CALVIN L. FOX, Esquire
Assistant Attorney General
Suite 820
401 N.W. 2nd Avenue
Miami, Florida 33128

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